Feb. 23 1876 / Judge Davis 1-35 my

Reversed Swayne to write

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 162.

JOHN W. MORSELL, MICHAEL F. CALLAN, ET AL., APPELLANTS,

vs.

THE FIRST NATIONAL BANK OF WASHINGTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBA

FILED MARCH 23, 1874.

10 Wall's Cons 161

SUPREME COURT OF THE UNITED STATES.

No. 162.

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1 *Bill of complaint.—Filed September* 22, 1871.

In the supreme court of the District of Columbia.

THE FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL, MICHAEL F. CALLAN, JOHN E. Thompson, Frederick W. Jones, William R. Woodward, Joseph R. Edson, Flodoardo Howard, Eliza E. Howard, Anna E. Howard, Elgan A. Sherman, Mary L. Sherman, Henry C. Sherman, and James L. Sherman.

No. 2517. Equity docket 11.

To the honorable the judges of the supreme court of the District of Columbia:

The bill of complaint of the First National Bank of Washington, in the District of Columbia, as well in its own behalf as in the behalf of all judgment-creditors of the defendant, John W. Morsell, similarly situated, who may elect to come in as parties to this cause, respectfully shows:

2 1. That it is a corporation doing business in the said District and duly organized in pursuance of the act of Congress entitled "An act to provide a national currency," &c., &c., approved June 3d, 1864.

2. That on or about the 24 day of January, 1871, the said complainant obtained a judgment at law, in this court, in cause numbered 7899, against the above-named defendant John W. Morsell, for the sum of eight hundred dollars, with interest thereon from the 17th day of May, 1869, until the said judgment shall have been paid, together with the costs of said suit, which amount to the sum of $19.05, and that an execution of fieri facias was issued on said judgment by the clerk of this court, which said execution was afterwards returned "nulla bona" by the marshal of said District; all of which will more fully appear

3 by a short note of the said judgment showing the *the* docket entries in said cause, hereto annexed and made a part of this bill, which short notice is marked "Exhibit A."

3. That said judgment still remains unpaid and wholly unsatisfied, and that the said defendant John W. Morsell, as the plaintiff is informed and believes, has no property upon which an execution can be levied, and that the complainant is without adequate remedy at law in the premises.

4. That on or about the 4 day of November, 1867, the said defendant, John W. Morsell, being seized of lot numbered forty-four (44) in reservation numbered ten (10) in the city of Washington, in the District of Columbia, duly executed a deed of trust, and delivered the same to the defendant, Flodoardo Howard, in which conveyance the wife of said Morsell joined, by which said deed was conveyed to said Howard

4 the said lot of ground numbered 44, for the purpose, and none other, of securing the defendant' Eliza E. Howard, Anna E. Howard, Elgan A. Sherman, Mary L. Sherman, Henry C. Sherman, and James L. Sherman, the payment of the sum of ten thousand dollars, all of which sum has become due and payable except $44.99 thereof, and this last-named portion of said entire debt will fall due some time in October, 1871. And the complainant further alleges, upon information

and belief, that all of said debt of $10,000 has been paid and discharged by the said Morsell, except a small part thereof.

5. That on or about the 21st day of October, 1869, the said defendant John W. Morsell, and his wife, executed in due form of law and delivered to the defendants Frederick W. Jones and William R. Woodward, a deed of trust, whereby they conveyed to said Jones and Woodward the said lot of ground mentioned, 44, for the purpose, and none other, of securing to the Washington Co-operation Building and Deposite Association the payment of about the sum of three thousand and fifty dollars, to be paid in monthly installments to the treasurer of said association.

6. That on or about the 1st day of March, 1871, the said defendant John W. Morsell, and his wife, executed in due form of law, and delivered to the defendants Frederick W. Jones and Joseph R. Edson, a deed of trust, whereby they conveyed to said Jones and Edson the said lot of ground numbered 44, for the purpose, and none other, of securing to the said Washington Co-operation Building and Deposite Association the payment of the further sum of about $1,060.00, to be paid in monthly installments by the said Morsell to the treasurer of said association.

7. That a large part of the said indebtedness to the said association has already been paid by the said Morsell to said association, as the complainant is informed and believes; the said lot 44 is of great value, and is worth a large sum beyond the balance of the said several sums of indebtedness now remaining unpaid, and that said deeds of trust stand as incumbrances and liens upon the said property, leaving only an equitable estate therein the said defendant Morsell.

8. That the said Washington Co-operative Building and Deposite Association is a voluntary association, as complainant is informed and believes, composed of a great number of individuals unknown to the complainant and its officers, and too numerous to be made parties to this suit. That said defendant Michael P. Callan is the treasurer of the said association, and the custodian of its funds, and that said defendant John E. Thompson is the secretary of the said association, and the custodian of its books of account, and charged with the duty of keeping the accounts of said association.

In consideration whereof, and because the complainant can have adequate relief in the premises only in a court of equity, where matters of this nature are properly relievable and cognizable, the said complainant prays as follows, to wit:

1. That the said lot numbered 44, in reservation number 10, with the appurtenances thereunto appertaining, may be sold under the decree of this court, and that out of the proceeds of such sale the balance of the indebtedness secured by the deeds of trust hereinbefore mentioned may be first paid off, and that then the said judgment for $800.00 in favor of the complainant, together with all interests and costs, may be next paid to the complainant, and that the residue, if any, may be paid over to such judgment creditors of the said Morsell as may have elected to come in, or, none appearing, that said residue may be disposed of as the court may direct.

2. That all the defendants may answer hereto, and that the defendants Eliza E. Howard, Anna E. Howard, Elgan A. Sherman, Mary L. Sherman, Henry C. Sherman, and James L. Sherman, may be required to state upon their respective oaths how much money, if any, remains due of the said indebtedness of $10,000.00, and that the said defendants Michael P. Callan and John E. Thompson may be required to state in behalf of said association how much money still remains due upon the

debts mentioned in the said deeds of trust from said Morsell to Jones and Woodward, and to Jones and Edson.

3. That the complainant may have such other and further re-
9 lief as he may be entitled to have, and as may be agreeable to equity and good conscience.

4. That the writ of subpœna may issue to the defendants.

H. C. SWAIN, *A. C.*

ENOCH TOTTEN,
Solr. and Counsel for Complainant.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, Henry C. Swain, asst. cashier of the complainant, the First National Bank of Washington, being first duly sworn, do depose and on my oath say, that I have read the foregoing bill of complaint and know the contents thereof, and that the facts therein stated positively are true, and that the facts therein stated, upon information and belief I believe to be true.

HENRY. C. SWAIN.

Subscribed and sworn to before me this 22d day of September, 1871.
WM. M. TENNEY, *Notary Public.*

10 *Exhibit A.*

Supreme court of the District of Columbia.

FIRST NATIONAL B'K OF WASHINGTON, *vs.* JOHN W. MORSELL. } At law. No. 7899.

1871. JAN. 24.—Judgment for plaintiff for $800, with interest from
17 May, 1869, till paid, & costs.
Costs, $19.05
Fi. fa. "Nulla bona."
Test:

R. J. MEIGS, *Clerk.*

Search & copy, 45.

11 *Summons to answer.—Issued Sept.* 22, 1871.

In the supreme court of the District of Columbia, Sept. 22, 1871.

THE 1ST NAT'L BANK OF WASHINGTON, *against* JNO. W. MORSELL ET AL. } No. 2517. Equity docket 11.

The President of the United States to John W. Morsell, Michael P. Callan, John E. Thompson, Frederick W. Jones, Wm. R. Woodward, Joseph R. Edson, Flodoardo Howard, Eliza E. Howard, Anna E. Howard, Eliza A. Sherman, Mary L. Sherman, Henry C. Sherman, and James L. Sherman, defendants:

You are hereby commanded to appear in this court, at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.
Witness D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS, *Asst. Clerk.*

12 MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken for confessed.

MARSHAL'S RETURN.—"Not to be found, J. L. Sherman, Ann E. Howard, and Eliza E. Howard. Summoned the others.

A. SHARP, *Marshal.*

SEPT. 25th, 1871.

13 *Answer of J. W. Morsell.—Filed Dec.* 5, 1871.

In the supreme court of the District of Columbia.

THE FIRST NATIONAL BANK OF WASHINGTON, pltf., *vs.* JOHN W. MORSELL ET AL., DEFTS. } In equity. No. 2517.

The answer of John W. Morsell, one of said defendants, to the bill of complaint of said plaintiffs.

In answer to said bill, I say as follows:

1. I am informed and believe that the plaintiffs are a corporation doing business in said District, and organized in pursuance of an act of Congress approved June 3, 1864, as alleged.

2. I admit that the plaintiffs, on 24 January, 1871, obtained the judgment in cause No. 7899, law, against me for $800, with interest from 17 May, 1869, and costs, as alleged, and that execution was duly issued thereon, and returned nulla bona. Said judgment was rendered
14 against me as accommodation endorser of a promissory note drawn by one William M. Barry, who, though a joint obligor with me, was not sued in said action.

3. Said judgment is still wholly unsatisfied, as I am informed.

4. I executed and delivered to Flodoardo Howard the deed of 4th November, 1867, conveying lot 44, reservation 10, to secure $10,000 to Eliza & Anna E. Howard and Edgar H., Mary L., Henry C., and James L. Sherman, as alleged. My wife joined in said deed. This deed was given to secure the deferred payments on said property, which I bought from said parties so secured. Said debt is all due, but is not all paid. Two notes secured by said deed, payable to the order of said Eliza E. Howard, and two other notes, all secured by said deed, payable to the order of said Mary L. Sherman, each of said four notes being for
15 $200, and payable respectively in 43, 44, 45, & 46 months after date, dated November 4, 1867, and bearing interest from date, are still unpaid. There is also a note of the same date for $4,499, bearing interest from date, at 47 months, secured by said deed, still unpaid. And I am informed that another of the notes secured by said deed for $387.67, dated March 29, 1867, and bearing interest from date, is still outstanding and unpaid.

5. I and my wife, on 21st October, 1869, executed and delivered to Woodward and Jones, trustees Washington Co-operative Building and Deposit Association, a deed conveying said property in trust to secure said association $3,050, advances on stock held by me, giving my bond to said association in the penalty of $10,000 bearing the same date, conditioned to be void whenever, by payment to the treasurer of said asso-

ciation on 2d Wednesday of each month thereafter of 120th part
16 thereof, I should have paid as well $3,050, as any and all other and future advances which might within 5 years thereafter, to the extent of $10,000, be made to me by said association, with all dues, fines, arrearages, forfeitures, and expenses which might accrue and be chargeable against me under the constitution and articles of said association. It is provided in said deed that, at the end of four months from the first default, said bond shall be taken as forfeited, and the trustees, at the written request of the treasurer, are required to sell at public auction after notice given.

6. On 1st March, 1871, I and my wife executed and delivered to Jones & Edson, trustees of said association a deed conveying said property in trust to secure said association the further sum of $1,060. At the same time I gave another bond in the penalty of $10,000, conditioned to be void upon the payment of said $1,060 in monthly instalments, and in other respects, as the bond alone recited, of 21st October, 1869.

17 Many other subsequent advances were made to me, which are secured by said deeds.

7. Very little of the indebtedness to said association has been paid, and said property would bring little, if anything, more than would satisfy said indebtedness.

It is not averred in said bill that said bank has been authorized by the Comptroller of the Currency to commence the business of banking.

J. W. MORSELL.

R. T. MORSELL, *Sol. for Deft.*

I do solemnly swear that I have read the foregoing answer by me subscribed, and know the contents thereof, and that the matters and things therein stated upon my personal knowledge are true, and the matters and things therein stated upon information and belief I believe to be true.

J. W. MORSELL.

Subscribed and sworn to before me this 5th of Decr., 1871.

R. J. MEIGS, *Clerk.*
By. L. P. WILLIAMS, *Asst. Clerk.*

18 *Answer of M. P. Callan.—Filed Dec.* 8, 1871.

In the supreme court of the District of Columbia.

THE FIRST NATIONAL BANK OF WASHINGTON, plff., *vs.* JOHN W. MORSELL ET AL., DEFT. } In equity. No. 2517.

The answer of Michael P. Callan, one of the defendants, to the bill of complaint of the above-named plaintiffs.

In answer to said bill, I say as follows:

1. I am treasurer of the Washington Co-operative Building and Deposit Association, an unincorporated joint-stock company, duly organized and doing business in the city of Washington, in said District.

2. I have no knowledge but from hearsay of the judgment against the defendant Morsell, mentioned in said bill, or as to—

3. What property he has, if any, besides that described in said bill.

4. Or of the deed conveying said property to Flodoardo Howard, in trust, mentioned in said bill, except as therein set forth,
19 or whether the indebtedness it was given to secure has been satisfied or not.

5. It is true, as alleged in said bill, that said Morsell and his wife, on 21st October, 1869, executed and delivered to Frederick W. Jones and William R. Woodward, trustees of said association, a deed whereby they conveyed to said trustees lot No. 44, in reservation No. 10, in said city, to secure a certain indebtedness of said Morsell to said association, together with such future advances as might, within five years of that date, be made by said association to said Morsell, and all fines, penalties and forfeitures that might be incurred by him in said deed is particularly set forth.

6. It is also true, as alleged, that said Morsell and wife, on 1st March, 1871, executed and delivered to Frederick W. Jones and Joseph R. Edson, the then trustees of said association, another deed, con-
20 veying said lot in trust to secure a certain other indebtedness of said Morsell to said association, together with such future advances as might, within five years of that date, be made by said association to said Morsell, and all fines, penalties, and forfeitures that might be incurred by him as in said deed is particularly set forth.

7. But it is not true that a large part of the indebtedness to said association, secured by said two last above-mentioned deeds, has been paid as alleged. On the contrary, there is now due said association, by said Morsell under said deeds of trust, the sum of $6,974.26, and this sum will be augmented every successive month by the accumulation of unpaid interest and fines.

M. P. CALLAN, *Treasurer.*

I do solemnly swear that I have read the foregoing answer by
21 me subscribed, and know the contents thereof, and that the matters and things therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

M. P. CALLAN, *Treasurer.*

Subscribed and sworn to before me, Dec. 8, 1871.

R. J. MEIGS, *Clerk.*

Replication.—Filed Jan. 5, 1872.

In the supreme court of the District of Columbia.

BANK *vs.* MORSELL ET AL. } 2517. Equity.

The complainant hereby joins issue with the defendants Morsell and Callan, and will hear the cause on bill and answers against them.

ENOCH TOTTEN,
Solr's. for Compl't's.

22 *Order for hearing.—Filed Jan'y* 5, 1872.

BANK *vs.* MORSELL ET AL. } 2517. Eq.

The clerk will please set this cause for hearing on bill and answer, 5 Jan'y, 1872.

ENOCH TOTTEN.
For Compl't.

In pursuance of precipe, cause calendered for hearing at February, 1872, special term.

By the clerk.

Decree for sale.—Filed Feb'y 9, 1872.

In the supreme court of the District of Columbia.

THE FIRST NATIONAL BANK OF WASHINGTON *vs.* JOHN W. MORSELL. } 2517. Equity docket 11.

This cause having come on to be heard on the bill and answers, and the proceedings having been read and considered—

It is thereupon, this 9th day of February, 1872, by the court,
23 adjudged, ordered, and decreed that the real estate of the said John W. Morsell, in the proceedings mentioned, be sold.

That Enoch Totten, esq., of the city of Washington, and District of Columbia, be, and he is hereby, appointed trustee to make such sale, and that the course and manner of his proceedings shall be as follows: He shall first file in the office of the clerk of this court a bond to the United States, executed by himself, with a surity or sureties to be approved by the court, in the penalty of twenty thousand dollars, for the faithful performance of the trust reposed in him by this decree, or which may be reposed in him by any future order or decree in the premises.

He shall then proceed to make sale of the said premises, having first given at least three weeks' previous notice, inserted in some newspaper published in Washington City, every other day, for the said
24 period, and such other notice as he may think proper, of the time, place, and manner of such sale, and the terms thereof. Such terms shall be as follows, to wit: the purchase-money to be paid one third ($\frac{1}{3}$) in cash, the balance in equal installments at six, twelve, and eighteen (6, 12, & 18) months from the day of sale; the whole to bear interest from the day of sale, and the deferred payments thereof to be secured by notes of the purchaser, or to be paid in cash on the ratification of the sale by the court.

And as soon as convenient, after any such sale or sales, the said trustee shall return to this court a full and particular account of the same, with an affidavit of the truth thereof, and of the fairness of such sale or sales, annexed. And, on a ratification of such sale or sales by the court, and on payment of the whole purchase-money, and not
25 before, by the purchaser, the said trustee, by a good and sufficient deed, to be executed agreeably to law, shall convey to the purchaser or purchasers of said property, and to his, her, or their heirs, the property to him, them, or her sold, free, clear, and discharged of all claim of the parties to this cause, and of any person or persons claiming by, through, from, or under them. And the said trustee shall bring into this court the money arising from such sale or sales, to be disposed of under the direction of this court, after deducting therefrom the costs of this suit, and such commissions to the said trustee as the court shall think proper to allow on consideration of the skill, attention, and fidelity wherewith he shall appear to have discharged his trust.

By the court:

A. WYLIE.

26 *Trustee's bond.—Filed Feb'y 15, 1872.*

Know all men by these presents that we, Enoch Totten and William S. Huntington, of the city of Washington in the District of Columbia, are held and firmly bound unto the United States, in the full

sum of twenty thousand (20,000) dollars to be paid to the said United States; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this ninth day of February, in the year eighteen hundred and seventy-two.

Whereas by a decree of the supreme court of the District of Columbia, (holding a special term,) bearing date on the ninth day of February, eighteen hundred and seventy-two, and passed in a cause in the said court wherein the First National Bank of Washington is complainant and John W. Morsell and others are defendants, the above-bound
27 Enoch Totten has been appointed trustee to make sale of certain real estate in the proceedings of said cause mentioned:

Now, the condition of the above obligation is such that, if the above-bounden Enoch Totten do and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void; otherwise to remain in full force and virtue in law.

ENOCH TOTTEN. [SEAL.]
W. S. HUNTINGTON. [SEAL.]

Approved by the court this 15th day of February, 1872.

A. WYLIE.

28 *Creditors' petition.—Filed Mar.* 4, 1872.

In the supreme court of the District of Columbia, sitting in equity.

FIRST NATIONAL BANK *vs.* JOHN W. MORSELL ET AL. } 2517. Eq. doc. 11.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The petition of Noble B. Means and Freeman Skinner, and , trading under the firm and style of Means, Skinner & Co., of the city of Baltimore and the State of Maryland, respectfully shows—

1st. That they are informed, and believe it to be true, that the plaintiff's bill filed in this cause is designed to subject to sale the certain equitable interest of the defendant, John W. Morsell, in the lands and tenements mentioned in said bill, in order to satisfy a judgment recovered by the plaintiff against said Morsell, and that said bill is
29 filed as well for the benefit of all creditors of said Morsell who shall unite therein and contribute to the costs thereof as the said plaintiff.

2d. That your petitioner, on the 10th day of February, A. D. 1871, recovered a judgment against said John W. Morsell, on the law side of your honorable court, in cause numbered 7955, for the sum of $267.68, with interest on $201.88, from the 15th day of November, A. D. 1870, and on $65.80 from the 6th day of December, A. D. 1870, besides costs of suit; that they caused the writ of fieri facias to be issued on said judgment, and the same has been returned by the marshal nulla bona; and they file herewith a short copy of said judgment, (Exhibit M., S. & Co., No. 1,) which they pray may be taken as part hereof.

3d. Your petitioners aver, charge, and offer to prove, that said judgment is unpaid and unsatisfied.

30 PRAYERS.

Inasmuch, therefore, as your petitioners are remidiless at law, they pray your honors—

4th. That they may be made parties coplaintiff in this cause and be allowed to prosecute the same, hereby offering themselves willing and ready to contribute to the expense of the same.

5th. That the defendant, John W. Morsell, may be summoned, and be required under oath to answer this petition.

6th. That the relief prayed for by the complainant in this cause in its behalf may be extended to and granted unto your petitioners.

7th. And for such other and further relief as to your honors may seem meet, the premises considered.

And they will ever pray, &c.

WM. D. CASSIN,
Solicitor for Petitioners.

31 *Exhibit M., S. & Co., No. 1.*

Clerk's office, supreme court of the District of Columbia.

MEANS, SKINNER & Co., *vs.* JOHN W. MORSELL. } No. 7955. Law.

1871.

Feb. 10.	To judgment by default for	$267	68
	" interest on $201.88 from Nov. 15, '70; on $65.80 from Dec. 6, 1870		
	Costs of suit	18	45
	Add costs	1	50
	Short copy, 45c.		

Test:

R. J. MEIGS, *Clerk.*
By J. JAY CAMP, *Asst. Clerk.*

FEBY. 29, 1872.

1871, Sept. 12.—Fi. fa. issued.
" Nov. 10—Returned nulla bona.

32 *Leave to file petition.—Mar. 4, 1872.*

In the supreme court of the Dist. of Columbia.

FIRST NAT'L BANK *vs.* J. W. MORSELL. } 2517. Equity.

Upon motion of Mr. Cassin it is, this 4th day of March, A. D. 1872, ordered that Means, Skinner & Co. (judgment-creditors) be allowed to file their bill in above cause, and be made plaintiffs therein.

By the court:

A. WYLIE.

Summons to answer the petition of Means & Co.

In the supreme court of the District of Columbia, March 4, 1872.

FIRST NATIONAL BANK, COMPLAINANT,
against
JOHN W. MORSELL ET AL., DEFENDANTS. } No. 2517. Equity.

The President of the United States to John W. Morsell, defendant:

You are hereby commanded to appear in this court, at its first
33 special term occurring twenty days after service of this subpœna, and answer the exigency of the petition of Means, Skinner & Co., under pain of attachment, and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.
[SEAL.] R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office, on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

Summoned defendant.

A. SHARP, *Marshal.*

MARCH 5TH, 1872.

34 *Petition of Sam'l Barth.—Filed Mar.* 28, 1872.

In the supreme court of the District of Columbia, holding an equity court for said District.

THE FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL ET AL. } In equity. No. 2517.

To the honorable the justices of the supreme court of the District of Columbia, holding an equity court:

Your petitioner, Samuel Barth, merchant, of the city of Baltimore, and a citizen thereof, respectfully shows:

1st. On the day of March, 1872, he recovered a judgment on the common-law side of your honorable court against said defendant, John B. Morsell, for the sum of $136.01, with interest from the 1st day of March, 1872, and that, on the 20th day of March, 1872, he caused a
35 writ of fieri facias to issue on said judgment to the marshal of the District of Columbia; that said writ was duly returned into the clerk's office of said court on the 25th day of March, 1872, by said marshal, nulla bona; that said judgment remains unsatisfied and unreversed, and that no part of the same has been paid, as will appear by a short copy of said judgment hereto annexed, marked "S. B., No. 1."

That said defendant, John W. Morsell, as your petitioner is informed and believes, has no property within the jurisdiction of your honorable court out of which his said judgment can be satisfied, and that he has an equitable interest in the real estate in this cause.

Your petitioner further shows that he is ready and willing to contribute his proportion of expenses in this cause, and, therefore, prays as follows:

1st. That your petitioner be allowed to become one of the complainants in this cause.

36 2d. That his said real estate in this cause may be sold, and your petitioner's said judgment be paid out of the proceeds of said sale.

3. That your petitioner may have such further and other relief as the nature of his case may require.

4. That the defendant to this petition is John W. Morsell.

WM. JNO. MILLER,
Sol. for Petitioner.

EXHIBIT S. B., No. 1.

In the supreme court of the District of Columbia this 28th day of March, 1872.

SAMUEL BARTH *vs.* JOHN W. MORSELL. } At law. No. 9407.

1872, March 9. Judgment for plaintiff, confessed—$136.01—with interest from 1st March, 1872, until paid.

March 20th, 1872, fi. fa.

" 25 " " " nulla bona.

Copy test.

R. J. MEIGS, *Clerk*,
By CH. MCNAMEE,
Asst. Clerk.

37 *Summons to answer petition of said Barth, issued March* 28, 1872.

In the supreme court of the District of Columbia. March 28th, 1872.

FIRST NAT'L BANK OF WASHINGTON, COMplainant, *against* JOHN W. MORSELL ET AL., DEFENDANTS. } No. 2517. Equity doc. 11.

The President of the United States to John W. Morsell, defendant:

You are hereby commanded to appear in this court, at its first specia term occurring twenty days after service of this subpœna, and answer the exigency of the petition of Sam'l Barth, creditor, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

Summoned defendant.

A. SHARP, *Marshal.*

MAY 2D, 1872.

38 *Trustee's report.—Filed April* 13, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL. } Equity. No. 2517.

The report of Enoch Totten, trustee, appointed by the decree in this cause to make sale of certain real estate therein mentioned, respectfully shows:

That after giving bond, with surety, for the faithful discharge of his trust, as required by said decree, and giving notice of the time, place, manner, and terms of sale, by advertisement, inserted every other day, for three successive weeks before the day of sale, in the Evening Star and National Republican, two newspapers printed and published in the city of Washington, he did, pursuant to said notice, attend on the premises on the 20th day of March, 1872, at 3 o'clock in the afternoon

39 of said day, and having postponed the said sale from the said 20th day of March, until the 27th day thereof, did on said last-mentioned day, on the premises as aforesaid, proceed to sell the said real estate, to wit: lot numbered forty-four, (44,) in reservation number ten, (10,) in the said city of Washington, and did sell the same to J. W. McKnight, he being then and there the highest bidder therefor, at and for the sum of nine thousand one hundred and thirteen (9,113) dollars. He has since received the cash payment required by the decree, from the said J. W. McKnight, and also the notes of the said J. W. McKnight for the balance of the said purchase-money, payable in six, twelve, and eighteen months from the sale, with interest at six per centum per annum.

That is to say, he has received—

In cash	$3,037 67
Note date 28 March, 1872, at 6 months	2,025 11
" " " " " " 12 "	2,025 11
" " " " " " 18 "	2,025 11
	$9,113 00

40 The expenses of the sale of the property are as follows, to wit:

For advertising—Star	$67 13
" " Rep	111 25
" auctioneer	11 00
	$189 38

He has received from the said purchaser bills for unpaid taxes and assessments of the corporation of Washington upon the property sold, which said purchaser claims should be paid out of the purchase-money. Said bill he returns herewith for the action of the court.

Which is respectfully submitted.

ENOCH TOTTEN, *Trustee.*

DISTRICT OF COLUMBIA, *to wit:*

On this 13 day of April, 1872, before the subscriber, clerk of the supreme court of the District of Columbia, personally appeared the above-

named Enoch Totten, trustee, and made oath that the matters and things stated in the foregoing report are true, to the best of his knowledge and belief, and that the sale therein reported was fairly made.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Asst. Clerk.*

41 *Ratification of trustee's report nisi.—Filed April* 13, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK *vs.* JOHN W. MORSELL ET AL. } Equity. No. 2517.

Ordered on this 12th day of April, 1872, that the sale made and reported by Enoch Totten, trustee appointed to sell the real estate in the above cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 10th day of May, 1872, provided a copy of this order be inserted in some newspaper printed in Washington City, once in each week for three successive weeks before the said 10th day May, 1872.

The report states the amount of the sale to be $9,113.00.

By the court.

A. WYLIE.

42 *Proof of publication of order nisi.—Filed May* 13, 1872.

OFFICE OF THE NATIONAL REPUBLICAN,
Washington, May 3, 1872.

I hereby certify that the advertisement of which the annexed is a copy was published in the Daily National Republican, once a week for three successive weeks, commencing April 15, 1872.

W. J. MURTAGH,
Proprietor Nat'l Republican.

Sworn and subcribed before me this 3d day of May, 1872.
JOS. T. K. PLANT, *J. P.* [SEAL.]

Order of final ratification of sale.—Filed May 13, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK OF WASHINGTON *vs.* JOHN W. MORSELL ET AL. } Equity. No. 2517.

Proof of the publication of the notice required by the order in this
43 cause of April 12, 1872, having been filed, it is this 13th day of May, 1872, ordered, that the sale heretofore reported in this cause be, and the same is hereby, ratified and confirmed, no cause to the contrary having been shown.

And it is further ordered that the cause be, and it is hereby, referred to the auditor of this court to ascertain and report the amounts due to the various encumbrances mentioned in the bill, and to state the account of the trustee for the proper distribution of the proceeds of the sale, he

making the usual allowances for costs of suit, expenses of sale, and commission of trustee.

By the court.

A. WYLIE.

44 *Petition of purchaser for possession.—Filed May* 20, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK OF WASHINGTON *vs.* JOHN W. MORSELL ET AL. } No. 2517. Equity docket 11.

The undersigned petitioner respectfully shows to this court:

That the property described in the bill in this cause was offered for sale in pursuance of the decree entered herein on the 27th day of March, 1872, and that I became the purchaser thereof at and for the sum of $9,113.00.

That soon afterwards, as am advised, the sale was confirmed by order of this court, and I fully complied with the terms of the sale as prescribed in said decree, by paying in cash $3,037.66 and giving my promissory notes, bearing interest, at six, twelve, and eighteen months from said day of sale.

That I am informed that the final order of ratification of said sale
45 has been made by the court, after due publication of notice to those interested to show cause to the contrary.

That premises so sold as aforesaid were at the time of said sale, and still are, occupied by the defendant, John W. Morsell, and that after the conditional confirmation of the sale of the court, about the 14th of April, 1872, I caused a notice to be served on said Morsell, that possession of said premises would be required by him as soon as the sale should be finally ratified. On the 17th day of May, 1872, I demanded possession of said premises so purchased by me from said Morsell, and notified him of the final ratification of said sale; but said Morsell declined to vacate said house and premises, and declared that it was his determination to retain the same as long as he should be permitted to retain it.

Your petitioner therefore prays the assistance of the court, and
46 that he may be put in possession of the premises, and for such other and further relief as may be proper.

J. W. McKNIGHT.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John W. McKnight, being first duly sworn, do depose and on my oath say that I am the petitioner who signed the foregoing petition, and that I have read the same and know the contents thereof; that as to the allegations therein contained on information and belief, I believe *to be* them to be true, and as to the allegations therein contained made on my own knowledge, I know them to be true.

J. W. McKNIGHT.

Subscribed and sworn to before me this 20th day of May, 1872.

[SEAL.] E. L. SCHMIDT,
Notary Public.

47 *Order for writ of possession.—Issued May* 20, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK OF WASHINGTON
vs.
JNO. W. MORSELL ET AL. } 2517. Equity docket 11.

On reading and filing the petition of the purchaser of the premises sold under the decree in this cause, this day filed, it is ordered, this 20 day May, 1872, that a writ of possession be issued in this cause to oust the defendant, John W. Morsell, from said premises, and put said purchaser in possession.

By the court.

A. WYLIE.

48 *Writ of possession.*

In the supreme court of the District of Col'a, the 22d day of May, 1872.

THE FIRST NATIONAL BANK OF WASHINGTON, D. C., plaintiff,
vs.
JOHN W. MORSELL ET AL., DEFENDANT'. } No. 2517. Eq. doc. 11.

The President of the United States to the marshal for said District, greeting:

You are hereby commanded, without delay, to cause the plaintiff to have possession of lot 44, reservation 10, and the house and appurtenances thereto belonging, for his term therein yet to come and unexpired, according to his recovery thereof in this action. And do you return this writ into the clerk's office of said court immediately after you have executed it, so indorsed as to show how you have executed the same.

Witness, D. K. Cartter, chief-justice of said court.

R. J. MEIGS, *Clerk, S. C. D. C.*,
By R. J. MEIGS, JR., *Asst. Clerk.*

Marshal's return.

Possession of the premises delivered to J. W. McKnight, plff., by order of attorney.

A. SHARP, *Marshal.*

JUNE 17th, 1872.

Received of Alex'r Sharp, U. S. marshal D. C., possession of the within-named premeses.

J. W. MCKNIGHT.

JUNE 17, 1872.

Answer of Flodoardo Howard.—Filed April 19, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL. } Equity. No. 2517.

The answer of Flodoardo Howard to the bill of complaint in the above cause.

I admit the allegations contained in said bill, so far as the same relate to me, and consent to the sale of the said property.

The amount of the debt still unpaid and secured by said trust-deed to me is as follows, to wit:

1. Note of J. W. Morsell to Eliza E. Howard, dated November 1, 1867, payable forty-three months after date, for $200, with interest; which note now is the property of Eliza E. Howard.

2. Note of same date, by said Morsell to Mary L. Sherman, payable forty-four months after date, for $2,000.00, with interest; which note is now the property of said Mary L. Sherman.

50 3. Note of same date by said Morsell to Eliza E. Howard, payable forty-five months after date, for $200, with interest; which note is now the property of Anna E. Howard.

4. Note of same date, made by said Morsell to Mary L. Shannon, payable forty-six months after date, for $200.00, with interest; which said note is now the property of Mary L. Sherman.

5. Note of same date, by said Morsell to Eliza E. Howard, payable forty-seven months after date, for $45.00, with interest, which note belongs to Eliza E. Howard, Anna E. Howard, Elgan A. Sherman, Mary L. Sherman, Henry C. Sherman and James L. Sherman, as follows: One-half of said note and interest belongs to Eliza E. Howard and Anna E. Howard, and the other half to Edgar A. Sherman, Mary L. Sherman, Henry C. Sherman, and James L. Sherman.

51 I have no interest in the matters and things set forth in said bill except as trustee.

FLODOARDO HOWARD.

Answer of Eliza E. Howard et al.—Filed Apr. 10, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK *vs.* JOHN W. MORSELL ET AL. } 2517. Equity.

Answer of the defendants Eliza E. Howard, Anna E. Howard, Edgar A. Sherman, Henry C. Sherman, and James L. Sherman to the bill of complaint in the above-entitled cause.

The answer of the said defendants respectfully showeth:

That they admit the allegations of the said bill of complaint so far as the same relate to them, and consent to the sale of the said premises. That the notes made by defendant Morsell, secured by the said deed of trust to Flodoardo Howard, still remaining unpaid, are as follows, to wit:

52 1. Note dated November 1, 1867, to Eliza E. Howard, payable forty-three months after date, for $200 with interest; which said note is now held and owned by said Eliza E. Howard.

2. Note of same date to Mary L. Sherman, payable forty-four months after date, for $200, with interest; which said note is now held and owned by said Mary L. Sherman.

3. Note of same date to Eliza E. Howard, payable forty-five months after date, for $200, with interest; which said note is now owned and held by Anna E. Howard.

4. Note of same date to Mary L. Sherman, payable forty-six months after date, for $200, with interest; which said note is now held and owned by said Mary L. Sherman.

5. Note of same date to Eliza E. Howard, payable forty-seven months

after date, for $45.00, with interest; which said note is now the property of the following persons, defendants, and in the following proportions, to wit:

53 Eliza E. Howard, one-fourth part; Anna E. Howard, one-fourth part; Edgar A. Sherman, one-eighth part; Mary L. Sherman, one-eighth part; Henry C. Sherman, one-eighth part; James L. Sherman, one-eighth part.

HUGH T. TAGGART,
Solr. for the above Defts.

54 *Auditor's report filed.*

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK *vs.* MORSELL. } Eq. 2517. Doc.

This was a creditor's bill, filed by the bank to enforce the collection of a judgment against Morsell, out of his equitable interest in lot 44, reservation 10, in Washington City.

On November 4th, 1867, Morsell executed a deed of trust to Flodoardo Howard to secure the balance of the purchase-money due on said lot. This unpaid balance is not in dispute.

On October 21, 1869, Morsell executed another deed of trust to Jones and Woodward to secure the Washington Co-operative Building Association the "sum of $3,050.00, and also any and all other future advances which may hereafter, within five years from the date hereof, and to the extent of $10,000.00 be made by said association to said Morsell." For this debt a bond for $10,000.00 was executed and delivered by Morsell, the payment of which was secured by this deed of trust. The deed was stamped as a security for $3,050.00, the then actual debt.

55

January 24, 1871, the judgment in favor of the bank was docketed.

Feb'y 10, 1871, the judgment in favor of Means, Skinner & Co. was docketed.

March 1, 1871, Morsell executed another deed of trust to secure a further advance from said building association, which was evidenced by a bond under seal for $10,000.00. The deed recites that the money advanced under that deed was $1,060.00, and contains the same clause as to future advances as in the first deed above mentioned. This last deed was stamped as a security for $1,060.00.

56 Sept. 22, 1872, a creditor's bill was filed by the bank to sell the said lot 10, in order to collect the judgment out of the proceeds. Means, Skinner & Co. have become coplaintiffs with the bank, by petition, being judgment-creditors.

There does not seem any necessity to enter into a discussion of the effect of the clauses for future advances, (although the building association's claims have been objected to on this as on other grounds,) for it is clearly settled that "a mortgage is good though no money pass at the time, and the whole purpose be to create a lien for future advance or a security against loss from liabilities to be subsequently incurred." Amer. Law Reg., May, '72; Lyle vs. Ducomb, 5 Binne, 585; Shirras vs. Craig, 34; Ladua v. D. and M. R. R. Co., 13 Mich., 380, & authorities there cited.

57 We may safely assume, then, that there is nothing illegal in the contract for future advances.

The rule has apparently been settled in favor of subsequent mortgagees who are purchasers, that where the first mortgag*or* is not bound to make advances to any specified amount, but it is optional with him, he cannot claim priority for any that are made after actual notice of the existance of the second mortgage. Boswell vs. Goodwin, 31 Conn., 74 S. C.; 3 Amer. Law Reg., N. S., 79; Nelson's heirs v. Boyce, 7 J. J. Mansh, 401, & other authorities; Amer. Law Reg., May, '72.

The rule has not been extended to subsequent creditors, whether by judgment or otherwise, who stand upon a different footing from purchasers; who proceed against the debtor in invitum, seeking to reach his interest only and no more, taking nothing by contract or upon
58 the faith of apparent ownership. And therefore there seems to be no reason why even a notice of the judgment in this case should have prevented the building association from making additional advances under their first mortgage. But in point of fact there is no evidence of actual notice of the judgment.

The record of judgment is not notice in such cases.

It might be held with some show of reason that a record is notice against a subsequent purchaser or mortgagee, because these would be taking a new title to the land and are put upon inquiry as to all the incumbrance on it, but the existing mortgagee, merely making new advances under his mortgage in taking no new title, and is not therefore put upon inquiry as to the state of the title. But in fact, even as
59 against a subsequent mortgagee, the record of the judgment is not of itself notice.

The judgment alone does not bind a mere equity; it affects only the legal estate. One who takes with actual notice of it takes with notice of that which may be enforced in equity against the debtor's interest, and is therefore bound by it. And so if a bill be filed to enforce the judgment against the equitable interest, it is a lis pendens, and notice to all who deal with the debtor.

But here no bill was filed and no actual notice had of the judgment when the second deed of trust was given; and therefore the latter also must take precedence of the judgment.

This very case was among the first in this District in which the
60 subject of priorities between judgment-creditors and mortgagees was discussed, and it was held by the old circuit court that a mortgagee without actual notice of an intervening judgment might take a second mortgage, and would be pre*pared* to the judgment-creditor; and this rule has not been departed from in any subsequent decision.

The counsel for the bank also objects to the claims of the building association on the ground that the deed of trust which was filed to secure the present and future advances was not properly stamped. This deed of trust recites that it is given to secure "as well the sum of $3,050.00 as also any and all other future advances which may hereafter be made within five years from the date hereof, and to the extent of $10,000."

This deed was stamped as a security for $3,050, the then pres-
61 ent debt. When the advances were made, bonds were given by Morsell, the mortgagor, expressed on their face to be secured by the above-mentioned deed of trust; and each bond was stamped for the amount it represented.

The objection of the complainant's counsel is that the original deed of trust should have been stamped as a security for $10,000, or else that the bonds should have been stamped at the time the original deed of

trust was given, and that they cannot be subsequently stamped and be made to relate back to and become secured by the said original deed of trust.

Now, the act of June 30, 1864, s. 152, provides that "no instrument, &c., shall be stamped, unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner required by law, and the record of any such instrument upon which the proper stamp
62 or stamps aforesaid shall not have been affixed and canceled as aforesaid, shall be utter void, and shall not be used in evidence."

But the same act, § 160, provides further that, "Whenever any bond or note shall be secured by a mortgage, but one stamp shall be required to be placed on such papers: Provided, that the stamp duly placed thereon shall be the highest rate required for said *for said* instrument, or either of them."

Neither of these sections prescribe that the evidences of indebtedness shall be stamped at the same time as the deed of trust, and no reason appears why the evidences of indebtedness should not be stamped when they are respectively created.

The auditor has, therefore, preferred the claims of the building association, both under the first and second deeds of trust, to the
63 judgment in favor of the bank and Means, Skinner & Co.

Schedule A will show the trustee's account, and Schedule B the distribution of the fund among the parties entitled.

WALTER S. COX, *Auditor.*

SCHEDULE A.

Trustee's account.—ENOCH TOTTEN, *trustee.*

	Dolls. Cts.	Dolls. Cts.
To proceeds of sale of lot 44, res. 10, to J. W. McKnight		9,113
" cash payment		3,037 67
CR.		
By taxed costs court	66 20	
" auctioneer & advertising	189 38	
" publication order nisi	7 50	
Over	263 08	
64	263 08	
By taxes on property for 1870	363 74	
" for year ending June 30, '72	167 14	
" trustee's commissions	314 32	
" auditor's fee & depositions	100 00	
		1,242 28
Balance of cash		1,795 39
Deferred payments		6,075 33
Interest to accrue		364 50
Total for distribution		8,235 22

The vouchers for the above will be found filed with trustee's report.

W. S. COX, *Audr.*

SCHEDULE B.

	Balance of cash applicable first to payment of balance due under deed of dated Nov. 4, '67		1,795 39
65	Principal	845	
	Int. from Nov. 1, '67, to Mch. 27, '72	223 48	
			1,068 48
	Balance for next deed of trust		726 91
	viz:		
	Deed of trust dated Oct. 21, '69.		
	Deed of trust dated Mch. 1, 1871.		
	Bal. due under said deeds of trust, (see depositions & accounts filed with me)		7,408 70
	Balance of said deeds unsatisfied		6,681 79
	Int. to Sept. 28, 1872		200 45
			6,882 24
	Apply 1st deff'd payt., & int., due Sept. 28, 1872		2,085 86
	Balance unsatisfied		4,796 38
	Int. to March 28, 1873		143 88
			4,940 26
	Apply 2d d'ff'd payt., & int., due March 28, '73		2,146 61
	Balance unsatisfied		2,793 65
	Int. to Sept. 28, 1873		82 92
	Bal. b'd'g ass'n debt unsatisfied		2,876 57
	Apply 3d deff'd payt., & int., due Sept. 28, 1873		2,207 36
	Balance unsatisfied		669 21

W. S. COX, *Aud'r.*

66 *Testimony of Jno. E. Thompson before aud'r.*

Sup. court of the Dist. of Col.

THE 1ST NAT'L BANK *vs.* MORSELL ET AL. } 2517. Eq. doc. 11.

JOHN E. THOMPSON, being duly sworn, says:

I am secretary of the Washington Co-operative Building and Deposit Company.

(Account marked "Building Association account" handed to witness, and he says:)

Jno. W. Morsell rec'd the entire sum on the advance, dated Jan. 22d, 1870, being the 1st item in said account, and for $800.00. He received the full amount specified in each item of debit "to advance" in said account.

The items of debit mentioned, "pro-rata expenses," are charges made under the constitution of our association to be taxed on every settlement, by members, of advances made to them.

67 The item of debit "arrears of premium," $445.00, is a charge against Morsell on account of his failure to pay the proportions of premium chargeable to him monthly, and which he had agreed to pay at the time money was advanced to him.

The items of debit "premium for November" and "premium for December," $73.72, each, are the same as "arrears of premium," the last item of debit mentioned, which last item was made up to November, 1871, only.

The item of debit marked "fines," ($90.00,) is charged under the constitution, being 4 % on each and every dollar remaining unpaid at the end of each month.

(See sec. 4, art. 6, of the constitution.)

The item of debit "insurance," $22.00, was paid by me on the property of Morsell, which our assoc'n held in trust.

68 The items of debit "prem. to March, inclusive," is subject to the same explanation as before given for "arrears of premiums," being for add'l months of such arrears.

The item of debit "fines on all dues," $277.72, is a charge made under sec. 4, article 6, of the constitution.

The items of credit are all correctly made, and are all to which Morsell is entitled under the constitution. The balance due by Morsell to our assoc'n is $7,408.70, which has been in no way satisfied.

J. E. THOMPSON.

Sworn to and subscribed before me the 18th of June, 1872.

W. S. COX, *Auditor.*

MICHAEL P. CALLAN, being duly sworn, says:

69 I am treasurer of the Washington Co-operative Building and Deposit Company, and as such treasurer stated the account which is filed here by Mr. Thompson, secretary, and who has correctly explained all the items of debit and credit therein contained. The balance of $7,408.70 in the am't due now by Jno. W. Morsell to the said association.

M. P. CALLAN.

Sworn to and subscribed before me the 18th of June, 1872.

W. S. COX, *Auditor.*

FIRST NAT'L BANK
v.
J. W. MORSELL ET AL.

FLODOARDO HOWARD, being duly sworn, says:

70 I am the trustee named in the deed of trust on lot No. 44 in res. No. 10 in the city of Wash'n, made to secure Eliza E. Howard and others in the sum of $10,000.00, as set forth in said d. of trust referred to in the 4th paragraph of the bill of compl't in this cause. The whole of said $10,000.00 has been paid, excepting the notes here filed, amounting to $845.00, with interest from Nov'b'r 1st, 1867. Of these notes no part, either of the principal or interest, has been paid. The same are held by me as trustee.

FLODOARDO HOWARD.

Sworn to and subscribed before me the 10th of July, 1872.

W. S. COX, *Aud'r.*

FIRST NATIONAL BANK
vs.
MORSELL.

M. P. CALLAN, being recalled, says, in response to questions
71 propounded by Mr. Totten, counsel for plaintiff:

Question. On the acc't rendered and filed here by your association, I find an item of $500.00 charged to Morsell, of the date of January, 1871, no spacific date being named. State when this money was purchased by Morsell and give the date when it was actually paid.

Answer. It was purchased by him on the 11th day of January, 1871. It was actually paid to him on the 19th day of January, 1871, by check, (X 1.)

X 1.

No. 831.] WASHINGTON, *Jan.* 19, 1871.

[2-cent stamp.]

Treasurer Washington Co-operative Building and Deposit Association, pay to the order of Jno. W. Morsell, five hundred dollars, for advance on $\frac{5}{10}$ share of stock.

$500.00.] F. HOWARD, *President.*

Attest:

J. E. THOMPSON, *Secretary.*

72 Quest. Give me similar information as to the item of $500.00 charged as of Feb'y, 1871, without any specific date?

Answer. This was purchased on the 8th day of Feb'y & the amount, $500.00, was actually paid to him on the first day of March, 1871, by check, (X 2.)

X 2.

No. 863.] WASHINGTON, *March* 1, 1871.

Treasurer Washington Co-operative Building and Deposit Association, pay to the order of Jno. W. Morsell five hundred dollars, for advance on $\frac{1}{2}$ share of stock.

$500.00.] F. HOWARD, *President.*

Attest:

J. E. THOMPSON, *Secretary.*

The next purchase was actually pd. by check to him April 27th, 1871, (X 3.)

73 X 3.

No. 915.] WASHINGTON, *April* 27, 1871.

Treasurer Washington Co-operative Building and Deposit Association, pay to the order of J. W. Morsell one thousand dollars, for advance on one share of stock.

$1,000.00.] F. HOWARD, *President.*

Attest:

J. E. THOMPSON, *Secretary.*

Question. When a purchase was made did you always have the title of the property offered as security examined from the date of the last exam'n of said title by your assoc'n?

Answer. Yes, sir. The att'y for the assoc'n was required to examine

and make a report. Mr. Ashford is our attorney. If he reported favorably the money was advanced as purchased.

Quest. How many shares of stock did Morsell hold?

74 Answer. Eight shares, I think, of $1,000.00. He was entitled under this to borrow to the extent of $8,000.00. His monthly premium on all his loans, that is, on all the money advanced to him, was $73.72. His loans (purchases) amounted to $7,500.00. Thus, under the first deed of trust,

The monthly premium on the 1st adv. of $\frac{8}{10}$ ths shares of $800.00 Jan. 22d, '70, was							$11 58
"	monthly	prem.	on the	2d	do. of	$200.00 Mar. 21, '70..	2 66
"	"	"	"	3d,	of	$500.00 June 18, '70..	5 42
"	"	"	"	4th,	"	$1,000.00 Aug. 18, '70..	8 75
"	"	"	"	5th,	"	$1,000.00 Sept. 14, '70..	8 00
"	"	"	"	6th,	"	$1,000.00 Oct. 12, '70..	9 33
"	"	"	"	7th,	"	$1,000.00 Dec. 14, '70..	11 75
"	"	"	"	8th,	"	$500.00 Jan. 11, '71..	5 21
Under the 2d deed of trust:							
"	"	"	"	9th,	"	$500.00 Feb'y 8, '71...	4 42
"	"	"	"	10th,	"	$1,000.00 April 12, '71..	6 50

I can tell from my books the amt. of premiums paid by Morsell up to the 24th of Jan'y, 1871. It was $320.07 The amt. of fines

75 due and unpaid by Morsell on the 24th Jan'y, 1871, was nothing.

Adjourned to Thursday, July 18th, @ 1 p. m.

THURSDAY, *July 18th*, 1 p. m.

The fines charged in the account rendered, accrued after the 24th Jan'y, 1871.

Morsell is entitled to credit for payments on stock up to 24th Jan'y, '71, of $627.00. He is entitled to a credit on advances (returned) $257.52 up to said date. I will furnish an account showing what was actually due by Morsell to the assoc'n on the 25th of Jan'y, 1871, and what amt. on Feb'y 10th, 1871.

M. P. CALLAN.

Sworn to and subscribed before me the 18th day of July, 1872.
W. S. COX, *Aud'r.*

Testimony for defendants.

JOHN W. MORSELL, being duly sworn, (as a witness for the building assoc'n) says: I am one of the defendants named in this cause. I was a member of the building assoc'n named therein. I have been a member of that assoc'n for more than three years, I think.

Promissory notes, 4 in number, being handed to me, I can certify that the same are all signed by me. They are marked "Exhibits, notes, J. W. M."

(Mr. Totten, counsel for the pltff., objects to the introduction of said notes in evidence, it not being competent to introduce the same in this case, the building assoc'n having no right to protect themselves under the deed of trust given to secure said notes.)

I made those notes to secure the deferred payments on the orig-

77 inal purchase by me of the property in question. I paid some of these notes. The building association paid a good many of them.

I can't say exactly how many the building association paid. I paid two or three of the notes which 1st fell due out of moneys obtained from other sources than the building assoc'n. All the rest were paid with moneys obtained from the building association.

The building association was aware of the fact that the money it advanced to me was for the purpose of taking up said notes. In fact it was advanced to me only on the condition that these notes were to be taken up and turned over to the association. In taking up the same I acted, as it were, the agent of the assoc'n.

After I became a member of the association all of the said notes which were paid, were paid out of moneys that I got from said association. I think so, as well as I can remember.

78 Cross-exam'n of Mr. Morsell, by Mr. Totten:

The money that I got from the building assoc'n did not all go to the payment of the said notes. Something was taken out for payment of stock and dues due to the association. I may have used a little, I could not say how much, of the money received from the association, in the payment of outside matters of my own. It might have been a few dollars more sometimes. I remember once there was the sum of about $16.00 over what was required to pay the note or notes and my dues to the association.

The said notes were held by different parties.

I am sure that the understanding with the building association was that the money advanced by them was to go towards taking up
79 the said notes. As each note would be taken up the security of the building association would be greater.

I did take up these notes.

Question by auditor. What was the understanding, if any existed between yourself and the building association, in regard to the release of the original deed of trust given by you to secure the purchase-money of the property?

Ans. I don't recollect that there was any such understanding. The building association knew that that deed was on the property. As soon as all the notes were taken up I expected to get a release. I would have allowed the building association to hold the release if they had required it. I considered that the building association was protected by the said original deed of trust.

Redirect:

80 I regard the account rendered by the building assoc'n against me as a just and true account. I expected the balance to be greater against me than as shewn by said account.

Recross:

Question. Why is it that you consider the building association to be protected by the orig'l deed of trust?

Ans. My impression was, that on my failure to pay the 4 mos. dues to the association, the said association could have required the trustee, Dr. Howard, in the orig'l deed of trust to sell the property.

Question. In that event what was to become of the new bonds and deeds of trust to secure them, given by you?

Ans. These bonds were merely nominal things, as I understood them. They were given for the loans that I got from the building associat'n. They could foreclose for the whole amount due on the deeds of trust.

81 Quest. Was there any agreement between you and the officers of the building association that these old notes were to be kept alive in the hands of the building assoc'n; and if so, what was the agreement and what was said?

(Question objected to as already answered.)

Ans. There was no such understanding in that language that I can recollect. There was no such understanding in any language in regard to keeping the notes alive. In fact I don't understand exactly what you mean by keeping the notes alive, whether you alluded to the erasure of the names on the notes or not?

Question. Did you consider that you were bound to pay these notes again after they had been taken up by you and delivered to the building association?

(Objected to because it *answers* a fact not testified to by the witness.)

82 Answer. I did not consider that I was bound to pay them again. If you mean that by paying the building assoc'n what I owed them, I would be paying the said notes but once.

Question. Who erased your name—your signatures on these notes—on those that the signatures are erased?

Ans. I am not sure that I erased them all. I erased one of them. I am sure that I only erased some of them. Don't know who erased the others.

Quest. For what purpose or why did you erase your signatures?

Ans. I was always in the habit of erasing my signature to notes after they were paid, so that in case they should be lost, they would not be held against me.

Quest. Then you erased your name in order to prevent the notes being used against you again?

Ans. As as a matter of caution; yes.

83 Quest. When you paid these notes and delivered them to the assoc'n did you consider that they were finally paid and discharged?

Ans. I did, so far as between me and the parties that I bought the houses from.

Quest. Did you consider that the building assoc'n had a right to dispose of them and put them on the market against you?

Ans. I consider that they had a right to do what they pleased with them. They were their property.

Quest. Then why did you erase your signature from the notes?

(Objected; was already answered.)

Ans. I had no particular reason for erasing my signature. It was merely a habit that I got into. Sometimes I would not erase my signatures. If I had it do over again, I would not erase my signatures from those notes. I did not do it with a view of invalidating the claim of the building assoc'n.

84 Quest. If the building assoc'n had sold these notes back to the parties from whom you had bought your house would you have considered the notes good against you?

(Objected to.)

Ans. I don't think I would have paid them in that case.

Quest. For what purpose did you execute the two deeds of trust to the building assoc'n?

Ans. Well it was done for the security of the payment of the monthly dues.

Quest. And not the loans?

Ans. Not as I understand it.

JOHN W. MORSELL.

Sworn to and subscribed before me the 23d July, 1872.

W. S. COX, *Auditor.*

JOHN E. THOMPSON being recalled as witness for defendants, says:

I was ordered by the board of directors to take up the said notes
85 of Morsell and to hold them as a part of the security for the advances made, as the minutes of the assoc'n, which I have herewith will shew. The assoc'n took up and now holds the notes produced and filed. Dr. Howard, the trustee under the original trust to secure the purchase-money of the property, was president of the assoc'n and a member of the board of directors, and sanctioned these arrangements, and he stated that was desirous that Mr. Morsell should get out of his difficulties by means of the assoc'n. Mr. Morsell acted as my agent in paying the money for the notes. I trusted him at my own risk, because I did not know in whose hands the notes were, and I desired to save myself trouble in finding the holders. These notes were handed over to me by Morsell after they were taken up, to be held as security or part of the security for advances
86 he, Morsell, had received. Mr. Morsell offered to secure the association in that way, and the board of directors agreed to the proposition.

Quest. What was the understanding between Morsell and the board of directors (of which you are a member) about the assoc'n advancing to him moneys to take up these notes?

Ans. The understanding was that the association was to take up the notes for Morsell and hold them against the property, in connection with the bonds and deeds of trust to secure the advances made to him from time to time. These are the same notes presented here to day by me, and filed and referred to in the deposition of Morsell, heretofore made. The association did advance the money and paid full value for the notes taken up in every case, interest and all, with no discount nor de-
87 duction. In the account first filed by the assoc'n against Morsell, the credits were not paid in money by Mr. Morsell. They were nominal and made through the forms of the assoc'n, which entitled the members who desired to settle to such credits.

The minutes here presented are not all in my handwriting, but are copied under my direction from original notes of the proceedings, and afterwards read before and approved by the board of directors.

In answer to question by auditor, the witness says:

We would not have allowed the property to have been released of the original deed of trust even though we had held all the notes thereunder, unless Morsell had settled his entire indebtedness to the building assoc'n. We took the deed of trust direct to us from Morsell as additional security for dues to the assoc'n.

88 Cross-exam'n:

Quest. When did Morsell offer to secure the assoc'n by giving these old notes as security for advances; in other words, at what date was that agreement had with Morsell?

Ans. Before any money was advanced to him by the association.

Quest. Who talked with Morsell about it?

Ans. I did for one. He came to consult with me first about it, I believe.

Quest. When did the building assoc'n advance the means to take up the first of said notes?

Ans. About three years ago.

Quest. How many notes did you pay or take up in all?

Ans. My impression is that we took up all excepting one or two of those filed. The notes which we did not take up were not over two, I think. I am positive not over three, and were either for $200.00
89 or $150.00 each. The loans were made to Morsell under provisions different from loans made to other members. The minutes shew that the conditions of advances made to him were that one or more of the said notes were to be tak' up out of said advances.

The assoc'n never buys notes for speculative purposes, and the taking up of these notes was agreeably to Morsell's own proposition.

J. E. THOMPSON.

Sworn to and subscribed before me the 23d day of July, 1872.

W. S. COX, *Aud'r.*

MICHAEL P. CALLAN, being recalled as a witness for defendants, says: I am a member of the board of directors. It was understood and said by them that they considered the deeds of trust to the association
90 given by Morsell as add'l security. The advances were made to take up the original notes, which notes were to be held by the association for the purpose of securing such advances as were made to Morsell from time to time. Morsell made the proposition and it was accepted. The Dr. Howard who is a member of the assoc'n and its president and a member of the b. of directors, is the same Howard who is the trustee in the original deed of trust to secure the purchase-money of the prop. in question. He advocated all the actions of the board in regard to the transactions with Morsell.

Cross-exam'n.

Morsell became a member of the assoc'n before I became treas. of the assoc'n. I was made treasurer in Aug. 1870.

M. P. CALLAN.

Sworn to and subscribed before me the 23d July, 1870.

W. S. COX, *Aud'r.*

(2 sessions this 23d day of July, 1872.)

EXHIBIT—BUILDING ASSOC'N 3/C.

John W. Morsell to Washington Co-op. Building & Dep't Association.

1870.	Jan'y 22.	To cash advanced $\frac{8}{10}$ sh's	800 00
		" pro-rata expenses	3 20
1870.	Mar. 21.	To advance of $\frac{2}{10}$ sh's	200 00
		" pro-rata expenses	80
1870.	June 18.	To advance on $\frac{5}{10}$ sh's	500 00
		" pro-rata expenses	2 00
1870.	Aug.	To advance on 1 sh'r'	1,000 00
		" pro-rata expenses	4 00
1870.	Sept.	To advance on 1 sh'r'	1,000 00
		" pro-rata expenses	4 00
1870.	Oct.	To advance 1 sh'r'	1,000 00
		" pro-rata expenses	4 00
		Carried over	4,518 00

92	1870.	Brought over	4,518 00
	Dec.	To advance 1 sh'r'	1,000 00
		Pro rata expenses	4 00
	1871.		
Jan'y 19.		To advance $\frac{5}{10}$ sh's	500 00
		Pro rata expenses	2 00
Feb'y.		To advance $\frac{5}{10}$ sh's	500 00
		Pro rata expenses	2 00
		Am't. advances	6,500 00
		Pro rata expenses	26 00
	1871.		6,526 00
Apl.		To advance 1 sh'r'	1,000 00
		" Pro rata expenses	4 00
		" arrears of prem. to Nov., 1871	445 00
		" prem. for Nov	73 72
		" " " Dec	73 72
		" fines	90 00
			8,212 44
		Insurance	22 00
93		Prem. to March, inclusive	221 16
		Fines on all dues	277 72
			8,733 32
			$7,433 02
		Bal. due by Morsell	$7,408 70
	1871.		
Apr.		By ret. of advance on $\frac{8}{10}$ sh's	100 00
		" dues on $\frac{8}{10}$ sh's., 30 mo.	60 00
		" 10 % credit	16 00
"		By ret. of advance	21 66
		" dues on $\frac{2}{10}$ sh's	21 00
		" 10 %	4 26
"		By ret. of advance $\frac{5}{10}$ sh's	41 70
		" dues on $\frac{5}{10}$ sh's	37 50
		" 10 %	7 92
"		By ret. of advance	66 66
		" dues on 1 sh	75 00
		" 10 %	14 16
"		By ret. of advance	58 33
		" dues on 1 sh	75 00
		" 10 %	13 33
			612 46
94		Brought over	612 46
	1871.		
Apr.		By ret. of advance	50 00
		" dues 1 sh'r'	75 00
		" 10 %	12 50
"		By ret. of advance, 1 sh	33 33

	" dues on 1 sh	75 00
	" 10 %	10 83
"	By ret. of advance $\frac{5}{10}$ sh's	12 50
	" dues on $\frac{5}{10}$ sh's	37 50
	" 10 %	5 00
"	By ret. of advance $\frac{5}{10}$	8 34
	" dues on $\frac{5}{10}$ sh's	37 50
	" 10 %	4 58
Oct.	By advance on all	243 20
	" dues on stock	75 00
	" 10 %	31 82
		$1,324 62

Sworn to by M. Callan, May 18, 1872.

W. S. COX, *Aud'r.*

95 DFT.'S EX. A.

Deed of trust—John W. Morsell and wife to Wm. R. Woodward and Frederick W. Jones, trustees of the Washington Co-operative Building and Deposit Association.

Received, October 25th, 1869, 12.10 p. m., to be recorded, and the same day was recorded, in liber T and R, No. 17, folios 461, &c., one of the land records of Washington County, in the District of Columbia, and examined by—

S. WOLF, *Recorder.*

Filed Oct. 26, 1872.

R. J. MEIGS, *Clerk.*

This indenture, made this twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-nine, by and between John W. Morsell and Mary E. Morsell, his wife, of the city of
96 Washington, District of Columbia, of the first part, and William R. Woodward and Frederick W. Jones, trustees of the Washington Co-operative Building and Deposit Association, of the same place, of the second part.

Whereas, the said John W. Morsell, being indebted to said association in the sum of three thousand and fifty dollars for advances made by said association to said John W. Morsell on certain stock held therein by him, hath executed and delivered to the treasurer of said association his certain bond or writing obligatory in the penal sum of ten thousand dollars, and bearing even date with these presents, conditioned to be void whenever, by the payment to said treasurer or his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, of one hundred and twentieth ($\frac{1}{120}$) part
97 thereof, the said John W. Morsell shall have paid and satisfied to said association, as well the said sum of three thousand & fifty dollars, as also any and all other and future advances which may hereafter, within five years from the date hereof, and to the extent of said sum of ten thousand dollars, be made by said association to said John W. Morsell, together with all dues, fines, arrearages, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association; and in order to secure the full and faithful performance by said John W.

Morsell, his heirs, executors, or administrators, of the condition of said bond or sealed obligation, according to the true intent and meaning thereof, the said parties of the first part have agreed to execute these presents:

98 Now this indenture witnesseth that the said part' hereto of the first part, for and in consideration of the premises, and the sum of five dollars to them in hand paid by the said parties hereto of the second part, at and before the sealing and delivery of these presents, (the receipt of which is hereby acknowledged,) have given, granted, bargained and sold, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain and sell, alien, convey, and confirm unto the said trustees, said parties hereto of the second part, and the survivor of them, their and his heirs and assigns, all that piece and parcel of ground lying in the said city and district aforesaid, and known as and being lot numbered forty-four, (44,) in square or reservation numbered ten, (10,) and being the same lot and premises which were conveyed to said John W. Morsell by Eliza E. Howard

99 and others, by deed bearing date November 1st, A. D., 1867, and recorded in liber No. 558, folios 83, et seq., of the land records of the District of Columbia, together with all and singular the appurtenances, rights, privileges, improvements, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, interest, and estate of the said parties hereto of the first part, both at law and in equity, of, in, and to the same: To have and to hold the said piece and parcel of ground, as above described, with the appurtenances unto and to the use of them, the said trustees, said parties of the second part, and the survivor of them, their and his heirs and assigns forever; in trust nevertheless for the uses and trusts hereinafter mentioned, and none other; that is to say, upon trust to permit the said parties

100 hereto of the first part, their heirs, and assigns, to have, hold, use, occupy, possess and enjoy the said ground and premises hereinbefore granted, until some default or failure shall have been made in the performance of the condition made and stipulated in the said sealed obligation and writing obligatory to be done and performed as aforesaid; and in the event of any such default or failure being made in the performance of the said condition as aforesaid in said sealed obligation and writing obligatory mentioned, then the sealed obligation and writing obligatory at the expiration of four months from the date of the first default shall be deemed and taken as forfeited; and thereupon, at the request in writing of the treasurer of said association at the time being, the said trustees, and the survivor of them, their and his heirs

101 and assigns, shall proceed to sell and dispose of all and singular the premises hereinbefore granted, at public auction, to the highest bidder therefor, they or he first giving public notice of such sale, by advertisement in some one or more newspapers, at least fifteen days previous to the day of sale; and the time, place, and terms of sale are hereby left to the appointment of said trustees: and upon the full compliance by the purchasor with the terms and conditions of the said sale, the said trustees, and the survivor of them, their and his heirs and assigns, are hereby authorized and empowered to execute and deliver to such purchasor a good and sufficient deed, in fee-simple, for the said ground and premises, with the appurtenances, free from liability for the application of the purchase-money; and upon this further trust,

102 to dispose of the proceeds arising from such sale in manner following, to wit: After paying the proper expenses attending such sale, including three per centum on the gross amount thereof as com-

pensation to said trustees for their trouble and diligence in executing this trust, to pay in the first place to the treasurer of the said association at the time being whatever sum or sums of money shall and may then be found due and owing by the said John W. Morsell to the said association, upon an account to be stated by the said treasurer in which the said Morsell shall be "charged with all sums of money obtained" by him from said association, and the monthly dues, fines, and forfeitures intended to be secured by said bond or sealed obligation, and all taxes, charges, and cost of insurance paid by said association on account
103 of said premises and improvements, together with "a pro-rata share of expenses" of said association, and shall be credited with all "dues actually paid in and the amount of principal returned and ten per centum of that amount which shall be the profits" to said Morsell "on the share" or shares of stock advanced upon; [such account, when so stated, and approved by the board of directors of said association, to be conclusive upon all the parties interested,] and the residue, if any, shall be paid over to the said John W. Morsell, executors, administrators, or assigns.

In testimony whereof the said parties hereof of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

JOHN. W. MORSELL. [SEAL.]
MARY E. MORSELL. [SEAL.]

104 Signed, sealed, and delivered in presence of—
JN. FR. CALLAN.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, John F. Callan, notary public in and for the county aforesaid, in the said District, do hereby certify that John W. Morsell and Mary E. Morsell, parties to a certain deed, bearing date on the twenty day of October, A. D. 1869, and hereto annexed, personally appeared before me, in the District aforesaid, the said John W. Morsell and Mary E. Morsell being personally well-known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary E. Morsell, being by me examined privily and apart from her husband, and having the
105 deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notorial seal this 22nd day of October, A. D. 1869.

[SEAL.] JOHN F. CALLAN,
Notary Public.

[$3.50 int. rev. stamps.]

DEFDTS'. EX. B.

Deed of trust.—John W. Morsell & wife to Jones and Edson, trustees of the Washington Co-operative Building and Deposit Association.

Received March 4, 1871.—To be recorded, and the same day was recorded in liber No. 636, folios 376, one of the land-records of Washington County, in the District of Columbia, and examined by—

S. WOLF, *Recorder.*

Filed Oct. 26, 1872.

106 This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and seventy-one, by and between John W. Morsell and Mary E. Morsell, his wife, of the city of Washington, District of Columbia, of the first part, and Frederick W. Jones and Joseph R. Edson, trustees of the Washington Co-operative Building and Deposit Association, of the same place, of the second part. Whereas the said John W. Morsell, being indebted to said association in the sum of one thousand and sixty dollars for advances made by said association to said Morsell on certain stock held therein by him, hath executed and delivered to the treasurer of said association his certain bond or writing obligatory in the penal sum of ten thousand dollars and bearing even date with these presents, conditioned to be void
107 whenever by the payment to said treasurer or his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, of one one-hundred-and-twentieth ($\frac{1}{120}$) part thereof, the said Morsell shall have paid and satisfied to said association as well the said sum of one thousand and sixty dollars as any also and all other and future advances which may hereafter within five years from the date hereof, and to the extent of said sum of ten thousand dollars, be made by said association to said Morsell, together with all dues, fines, arrearages, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, and in order to secure the full and faithful performance by said Morsell, his heirs, executors, or administrators, of the
108 condition of said bond or sealed obligation according to the true intent and meaning thereof, the said parties of the first part have agreed to execute these presents. Now this indenture witnesseth, that the said part' hereto of the first part, for and in consideration of the premises, and the sum of five dollars to them in hand paid by the said parties hereto of the second part, at and before the sealing and delivery of these presents, (the receipt of which is hereby acknowledged,) have given, granted, bargained, and sold, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, and sell, alien, convey, and confirm unto the said trustees, said parties hereto of the second part, and the survivor of them, their and his heirs and assigns, all that piece and parcel of ground lying in the said city and District aforesaid,
109 and known as and being lot numbered forty-four (44) in reservation numbered ten, (10,) together with all and singular the appurtenances, rights, privileges, improvements, and other hereaditiments to the same belonging or in anywise appertaining, and all the right, title, and interest, and estate of the said parties hereto of the first part, both at law and in equity, of, in, and to the same. To have and to hold the said piece and parcel of ground as above described, with the appurtenances, unto and to the use of them, the said trustees, said parties of the second part, and the survivor of them, their and his heirs and assigns forever, in trust, nevertheless, for the uses and trusts hereinafter mentioned, and none other; that is to say, upon trust to permit the said parties hereto of the first part, their heirs, and assigns, to have, hold, use,
110 occupy, posses', and enjoy the said ground and premises hereinbefore granted, until some default or failure shall have been made in the performance of the condition made and stipulated in the said sealed obligation and writing obligatory to be done and performed as *as* aforesaid; and in the event of *of* any such default or failure being made in the performance of the said condition as aforesaid, in said sealed obligation and writing obligatory mentioned, then the sealed obligation and writing obligatory, at the expiration of four months from

the date of the first default, shall be deemed and taken as forfeited; and thereupon, at the request in writing of the treasurer of said association at the time being, the said trustees and the survivor of
111 them, their and his heirs and assigns, shall proceed to sell and dispose of, all and singular, the premises hereinbefore granted, at public auction to the highest bidder therefor; they or he first giving public notice of such sale by advertisement in some one or more newspapers at least fifteen days previous to the day of sale, and the time, place, and terms of sale are hereby left to the appointment of said trustees; and upon the full compliance by the purchaser with the terms and conditions of the said sale, the said trustees and the survivor of them, their and his heirs and assigns, are hereby authorized and empowered to execute and deliver to such purchaser a good and sufficient deed, in fee-simple, for the said ground and premises, with the appurtenances,
112 free from liability for the application of the purchase-money; and upon this further trust to dispose of the proceeds arising from such sale in manner following, to wit: after paying the proper expenses attending such sale, including three per centum on the gross amount thereof, as compensation to said trustees for their trouble and diligence in executing this trust, to pay in the first place to the treasurer of the said association at the time being whatever sum or sums of money shall and may then be found due and owing by the said John W. Morsell to the said association, upon an account to be stated by the said treasurer, in which the said Morsell shall be "charged with all sums of money obtained" by him from said association, and the monthly dues, fines, and forfeitures intended to be secured by
113 said bond or sealed obligation, and all taxes, charges, and cost of insurance paid by said association on account of said premises and improvements, together with "a pro-rata share of expenses" of said association, and shall be credited with all "dues actually paid in, and the amount of principal returned, and ten per centum of that amount which shall be the profits" to said Morsell "on the share" or shares of stock advanced upon; [such account, when so stated and approved by the board of directors of said association, to be conclusive upon the *the* parties interested,] and the residue, if any, shall be paid over to the said John W. Morsell, his executors, administrators, or assigns.

In testimony whereof the said parties hereto, of the first part, have hereunto set their hands and seals the day and year first hereinbefore written.

JOHN W. MORSELL. [SEAL.]
MARY E. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES WALTER.

114 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Charles Walter, justice of the peace in and for the county aforesaid, in the said District, do hereby certify that John W. Morsell and Mary E. Morsell, his wife, parties to a certain deed bearing date on the first day of March, A. D. 1871, and hereto annexed, personally appeared before me, in the District aforesaid, the said John W. Morsell and Mary E. Morsell, being personally well-known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary E. Morsell, being by me examined privily and

apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

115 Given under my hand and seal this first day of March, A. D. 1871.

[SEAL.] CHARLES WALTER,
J. Peace.

[$1.50 int. rev. stamps.]

DFDTS'. EXH. C.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Michael P. Callan, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the City of Washington, in the just and full sum of eleven hundred and twenty-five dollars, current money of the United States, to be paid unto the said Callan,

116 treasurer, as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs, executors, or administrators firmly by these presents, sealed with my seal, and dated this 18th day of January, one thousand eight hundred and seventy-one.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on one-half share of stock, amounting to the sum of eleven hundred & twenty-five dollars: Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on

117 the second Wednesday of each and every month occurring after the date hereof, the said Morsell shall pay and satisfy to said association the said sum of eleven hundred and twenty-five dollars, together with all dues, fines, forfeitures, and expenses, which may accrue and be properly chargeable against said Morsell, under the constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue of law.

Witness my hand and seal this 18th day of January, A. D. 1871.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. CONS. CALLAN.

NOTE.—This bond is secured by deed of trust from the undersigned to Fred. W. Jones et al., trustees, on lot 44, in res. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21st, A. D. 1869, and duly stamped and recorded.

JOHN W. MORSELL. [SEAL.]

[$1.50 int. rev. stamps.]

118 DFDTS'. EXH. D.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and

firmly bound unto Michael P. Callan, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the City of Washington, in the just and full sum of twenty-four hundred & ten dollars, current money of the United States, to be paid unto the said Callan, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be
119 made in the manner following, I bind myself, my heirs, executors, or administrators, firmly by these presents, sealed with my seal, and dated this 20th day of December, one thousand eight hundred and seventy.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto, of said association, received from the said association an advance on one share of stock amounting to the sum of twenty-four hundred and ten dollars:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, the said Morsell shall pay and satisfy to said associa-
120 tion the said sum of twenty-four hundred and ten dollars, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

Witness my hand and seal this 20th day of December, A. D. 1870.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
ALFRED H. LEE.

NOTE.—This bond is secured by deed of trust from the undersigned to Fred. W. Jones and Joseph R. Edson, trustees, on lot 44, in *square No.* res. 10, and improvements, in the city of Washington, District of Columbia, dated October 21st, A. D. 1869, and duly stamped and recorded in T. & R. 17, fol. 461.

JOHN W. MORSELL. [SEAL.]

[$2.50 int. rev. stamps.]

122 DEFDTS. EXH. E.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Michael P. Callan, treasurer of a certain association or joint-stock company designated the Washington Co-operative Building and Deposit Association of the City of Washington, in the just and full sum of twenty-one hundred and twenty dollars, current money of the United States, to be paid unto the said Callan, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs, executors, or admin-
123 istrators, firmly by these presents, sealed with my seal, and dated this 20th day of October, one thousand eight hundred and seventy.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitu-

tion and obligation attached thereto of said association, received from the said association an advance on one share of stock, amounting to the sum of twenty-one hundred and twenty dollars:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer or to his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, the said Morsell shall pay and satisfy to said
124 association the said sum of twenty-one hundred & twenty dollars, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

Witness my hand and seal this 20th day of October, A. D. 1870.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
M. P. CALLAN.

NOTE.—This bond is secured by deed of trust from the undersigned to F. W. Jones and Joseph R. Edson, trustees, on lot 44 in res. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21st, A. D. 1869, and duly stamped and recorded.

JOHN W. MORSELL. [SEAL.]

[$2.50 int. rev. stamps.]

125 DFDTS'. EXH. F.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Michael P. Callan, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the City of Washington, in the just and full sum of two thousand and fifty dollars, current money of the United States, to be paid unto the said Callan, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs, executors, or
126 administrators, firmly by these presents, sealed with my seal, and dated this 15th day of August, one thousand eight hundred and seventy.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on one share of stock, amounting to the sum of two thousand and fifty dollars:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer or to his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, the said Morsell shall pay and satisfy to said
127 association the said sum of two thousand and fifty dollars, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

Witness my hand and seal this 15th day August, A. D. 1870.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—

M. ASHFORD.

NOTE.—This bond is secured by deed of trust from the undersigned to F. W. Jones et al., trustees, lot 44 in res. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21st, A. D. 1869, and duly stamped and recorded in liber T. & R. 17, fol. 461.

JOHN W. MORSELL. [SEAL.]

M. ASHFORD.

[$2.50 int. rev. stamps.]

128 DFDTS'. EXH. G.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Robert L. Harris, treasurer of a certain association or joint stock company denominated the Washington Co-operative Building and Deposit Association of the City of Washington, in the *joint* and full sum of eleven hundred and fifty dollars, current money of the United States, to be paid unto the said Harris, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs, execu-
129 tors, or administrators, firmly by these presents, sealed with my seal, and dated this 13th day of June, one thousand eight hundred and seventy.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on one-half of share of stock, amounting to the sum of eleven hundred and fifty dollars:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, the said Morsell shall pay and satisfy to
130 said association the said sum of eleven hundred & fifty dollars, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell, under the constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

Witness my hand and seal this 13th day of June, A. D. 1870.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—

W. S. MCGILL.

NOTE.—This bond is secured by deed of trust from the undersigned to F. W. Jones et al., trustees, on lot 44 in res. No. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21, A. D. 1869, and duly stamped and recorded in T. & R. 17, 461.

[$1.50 int. rev. stamps.]

131 DFDTS'. EX. H.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Robert L. Harris, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the City of Washington, in the just and full sum of fourteen hundred & twenty-five dollars, current money of the United States, to be paid unto the said Robt. L. Harris, treasurer as aforesaid, or to his successor in office, for which payment, well and truly
to be made in the manner following, I bind myself, my heirs, ex-
132 ecutors, or administrators, firmly by these presents, sealed with
my seal, and dated this twentieth day of April, one thousand eight hundred and seventy.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on one-half share of stock, amounting to the sum of fourteen hundred and twenty-five dollars:

Now, the condition of the above obligation is such that if, monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every month occur'ing after
the date hereof, the said Morsell shall pay and satisfy to said associa-
133 tion the said sum of fourteen hundred and twenty-five dollars,
together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell, under the constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

Witness my hand and seal this 20th day of April, A. D. 1870.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—

NOTE.—This bond is secured by deed of trust from the undersigned to F. W. Jones and W. R. Woodward, trustees, on lot 44 in res. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21, A. D. 1869, and duly stamped and recorded in liber T & R 17, fol. 461, of the land-records of D. C.

[$1.50 int. rev. stamps.]

134 DFDTS'. EXH. I.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Robert L. Harris, treasurer of a certain association or joint stock company denominated the Washington Co-operative Building and Deposit Association of the City of Washington, in the just and full sum of five hundred and twenty dollars, current money of the United States, to be paid unto the said Robert L. Harris, treasurer as aforesaid, or to his successor in office, for which payment, well and
truly to be made in the manner following, I bind myself, my heirs
135 executors, or administrators, firmly by these presents, sealed
with my seal, and dated this 14th day of March, one thousand eight hundred and seventy.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on two-tenths of a share, amounting to the sum of five hundred and twenty dollars:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, the said Morsell shall pay and satisfy to
136 said association the said sum of five hundred and twenty dollars, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell, under the constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

Witness my hand and seal this fourteenth day of March, A. D. 1870.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
M. ASHFORD.

NOTE.—This bond is secured by deed of trust from the undersigned to William R. Woodward and Fred. W. Jones, trustees, on lot 44 in res. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21, A. D. 1869, and duly stamped and recorded in liber T & R, No. 17, folio 461.

JOHN W. MORSELL. [SEAL.]

Witness: M. ASHFORD.

[$1.00 int. rev. stamp]

137 DEFTS'. EXH. J.

Washington Co-operative Building and Deposit Association.

Know all men by these presents that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Robert L. Harris, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the City of Washington, in the just and full sum of twenty hundred dollars, current money of the United States, to be paid unto the said Robert L. Harris, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs, executors,
138 or administrators, firmly by these presents, sealed with my seal, and dated this eighteenth day of January, one thousand eight hundred and seventy.

Whereas the said J. W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on eight-tenths of a share of stock, amounting to the sum of twenty hundred dollars:

Now, the condition of the above obligation is such that by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every
139 month occur'ing after the date hereof, the said Morsell shall pay and satisfy to said association the said sum of twenty hundred dollars, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell, under the

constitution or articles of said association, then this obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

Witness my hand and seal this eighteenth day of January, A. D. 1870.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. E. THOMPSON.

NOTE.—This bond is secured by deed of trust from the undersigned to William R. Woodward and Fred. W. Jones, trustees, on lot 4, in res. No. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21, A. D. 1869, and duly stamped and recorded.

[$2.00 int. rev. stamps.]

140 DEFDTS'. EXH. K.

Washington Co-operative Building and Deposit Association.

Know all men by these presents, that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Robert L. Harris, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association, in the city of Washington, in the just and full sum of twenty-nine hundred dollars, current money of the United States, to be paid unto the said Robert L. Harris, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs,
141 executors, or administrators firmly by these presents, sealed with my seal, and dated this thirteenth day of December, one thousand eight hundred and sixty-nine.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligations attached thereto of said association, received from the said association an advance on one share of stock, amounting to the sum of twenty-nine hundred dollars:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every month occurring after the date hereof, the said Morsell shall pay and satisfy to
142 said association, as well the said sum of twenty-nine hundred dollars as also any and all other or further advances which may be hereafter made by said association to said Morsell as aforesaid, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, then this obligation to be null and void; otherwise to be and remain in full force and virtue in law.

Witness my hand and seal this 13th day of December, A. D. 1869.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
KATIE M. THOMPSON.

NOTE.—This bond is secured by deed of trust from the undersigned to Fred. W. Jones and Wm. R. Woodward, trustees, on lot 44 in res. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21, A. D. 1869, duly stamped and recorded.

[$3.00 int. rev. stamps.]

143 DFDTS'. EXH. L.

Washington Co-operative Building and Deposit Association.

Know all men by these presents, that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Robert L. Harris, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the city of Washington, in the just and full sum of ten thousand dollars, current money of the United States, to be paid unto the said Robert L. Harris, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs, executors, or administrators firmly by these presents, sealed with my seal
144 and dated this twenty-first day of October, one thousand eight hundred and sixty-nine.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on one share of stock, amounting to the sum of three thousand & fifty dollars;

And whereas the said Morsell, if the board of directors of the said association shall consent thereto, may hereafter, and within five years from the date of these presents, obtain and receive from said association other and further advances, to the extent of said sum of ten thousand dollars, on other stock now held or hereafter purchased by said Morsell:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said Morsell to the aforesaid treasurer or to his successor in
145 office, on the second Wednesday of each and every month occurring after the date hereof, the said Morsell shall pay and satisfy to said association as well the said sum of three thousand & fifty dollars as also any and all other or further advances which may be hereafter made by said association to said Morsell as aforesaid, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, then this obligation to be null and void; otherwise to remain in full force and virtue in law.

Witness my hand and seal this twenty-first day of October, A. D. 1869.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
J. F. CALLAN.

NOTE.—This bond is secured by deed of trust from the undersigned to William R. Woodward and Frederick W. Jones, trustees, on lot 44, in res. No. 10, and improvements, in the city of Washington, District of Columbia, dated Oct. 21st, A. D. 1869, and duly stamped and recorded.

146 DFDTS'. EXH. M.

Washington Co-operative Building and Deposit Association.

Know all men by these presents, that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and

firmly bound unto Michael P. Callan, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the city of Washington, in the just and full sum of seventeen hundred and eighty dollars, current money of the United States, to be paid unto the said Callan, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made, in the manner following, I bind myself, my
147 heirs, executors, or administrators firmly by these presents, sealed with my seal, and dated this 26th day of April, one thousand eight hundred and seventy-one.

Whereas the said John W. Morsell, stockholder in said association, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received from the said association an advance on one share of stock, amounting to the sum of seventeen hundred and eighty dollars:

Now, the condition of the above obligation is such, that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said John W. Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every month occurring after the date hereof, the said Morsell shall pay and satisfy to said association the
148 sum of seventeen hundred and eighty dollars, as also any and all other or further advances which may be hereafter made by said association to said Morsell as aforesaid, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, then this obligation to be null and void; otherwise to be and remain in full force and virtue in law.

Witness my hand and seal this twenty-sixth day of April, A. D. 1871.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. W. Cox.

NOTE.—This bond is secured by deed of trust from the undersigned to Frederick W. Jones and Joseph R. Edson, trustees, on lot 44 in res. No. 10, and improvements, in the city of Washington, District of Columbia, dated March 1st, A. D. 1871, and duly stamped and recorded in liber 636, fol. 376.

J. W. MORSELL. [SEAL.]

[$2.00 stamps.]

149 DFDTS'. EXH. N.

Washington Co-operative Building and Deposit Association.

Know all men by these presents, that I, John W. Morsell, of the city and county of Washington, in the District of Columbia, am held and firmly bound unto Michael P. Callan, treasurer of a certain association or joint-stock company denominated the Washington Co-operative Building and Deposit Association of the city of Washington, in the just and full sum of ten thousand dollars, current money of the United States, to be paid unto the said Callan, treasurer as aforesaid, or to his successor in office, for which payment, well and truly to be made in the manner following, I bind myself, my heirs, executors, or administrators firmly by these presents, sealed with my seal, and dated this first day of March, one thousand eight hundred and seventy-one.

Whereas the said John Morsell, stockholder in said associa-
150 tion, has, by virtue of and in accordance with the provisions of the constitution and obligation attached thereto of said association, received form the said association and advance on one-half share of stock, amounting to the sum of one thousand and sixty dollars;

And whereas the said John W. Morsell, if the board of directors of the said association shall consent thereto, may hereafter, and within five years from the date of these presents, obtain and receive from said association other and further advances to the extent of said sum of ten thousand dollars on other stock now held or hereafter purchased by said Morsell:

Now, the condition of the above obligation is such that if, by monthly payments of one one-hundred-and-twentieth part ($\frac{1}{120}$) thereof, made by said Morsell to the aforesaid treasurer, or to his successor in office, on the second Wednesday of each and every month occur'ing after the date hereof, the said Morsell shall pay and satisfy to said associa-
151 tion as well the sum of one thousand and sixty dollars as also any and all other or further advances which may be hereafter made by said association to said Morsell as aforesaid, together with all dues, fines, forfeitures, and expenses which may accrue and be properly chargeable against said Morsell under the constitution or articles of said association, then this obligation to be null and void; otherwise to be and remain in full force and virtue in law.

Witness my hand and seal this first day of March, A. D. 1871.

JOHN W. MORSELL. [SEAL.]

Signed, sealed, and delivered in presence of—
W. T. NIMMO.

NOTE.—This bond is secured by deed of trust from the undersigned to F. W. Jones and Jos. R. Edson, trustees, on lot 44 in res. No. 10, and improvements, in city of Washington, District of Columbia, dated March 1st, A. D. 1871, and duly stamped and recorded.

JOHN W. MORSELL. [SEAL.]

152 DFDTS'. EXH. O.

FIRST NATIONAL BANK
vs.
JOHN W. MORSELL.

Copy of the journal of the "Washington Co-operative Building and Deposit Association," so far as the said record relates to John W. Morsell.

27th regular meeting, Washington, January 12, 1870.

The members paid in their dues, and advances were sold by the secretary to the highest bidder, as follows:

$300.00 to John W. Morsell, at 185 per cent. premium; $500 to J. W. Morsell, at 169 per cent. premium.

Regular meeting of the board of directors, January 14, 1870.

The valuation committee then reported the property offered by
153 members as security for their purchases at the last meeting of the association, as follows:

J. W. Morsell's property on 3d st., between Pa. ave. and C st. west, $9,166.00. An advance of $800 was ordered on this property, on second mortgage.

Regular meeting of the association, March 9, 1870.

Members paid in their dues, and advances on stock was then sold by the secretary to the highest bidder, as follows:
$200 to J. W. Morsell, at 160 per cent. premium.

Meeting of board of directors, March 11, 1870.

An advance of $200 was granted to J. W. Morsell, on the same property as former advances, provided an additional note be taken up and no change has been made in the title.

Regular meeting of the association, Apl. 13, 1870.

154 The association was called to order by the vice-president. Members paid in their dues, and advances were then sold to the highest bidder, as follows:
$500 to J. W. Morsell, at 185 per cent. premium.

Regular meeting of the board of directors, Apl. 4, '70.

Mr. J. W. Morsell's purchase of advance of $500 was then taken up, and the val. committee reported the property as being the same given as security for former advances. The board ordered this advance to be made, provided two additional notes, secured by lien on the property, be paid and no change had in the title since last advance.

Regular meeting of the association, June 8, 1870.

The association was called to order by the vice-president. The roll was called and advances sold by the secretary to the highest bidders, as follows:
155 $500.00 to J. W. Morsell, at 130 per cent. premium.

Regular meeting of board of directors, June 10, 1870.

The board ordered an advance of $500, purchased at the last meeting of the association, to J. W. Morsell, provided it be applied to cancel an equal *in* amount of former purchases or to cancel existing encumbrances equal in amount on the property given as security for former advances.

Regular meeting of association, Aug. 10, 1870.

The secretary then, at a late and hot hour, proceeded to sell advances to the highest bidders, with the following result, the purchasers, for the most part, desiring to settle and cancel former advances:
$1,000 to J. W. Morsell, at 105 per cent. premium.

Regular meeting of board of direct', Aug. 11, 1870.

156 In regard to the advanced of $1,000 purchased by J. W. Morsell, the board ordered that it be paid, provided $500 be used to cancel that amount of his existing advances, and that two additional notes for $200 each, and int., secured by a first mortgage on the same property given as security for former advances, be deposited with the secretary.

SEP. 14, 1870.

The association met at the usual hour.

The secretary called the roll, members paid in their dues, and advances were sold to the highest bidders, as follows:

$1,000 to J. W. Morsell, at 96 per cent. premium.

Regular meeting of the board of directors, Sept. 16, 1870.

157 Mr. J. W. Morsell's advance of $1,000 was ordered, provided $500 be appropriated for a settlement of former indebtedness to the association, and two additional notes, secured by first mortgage on the property given as security, be taken up.

Regular meeting of the association, Oct. 12, 1870.

The secretary then sold advances to the highest bidders, as follows:

$1,000 to J. W. Morsell, at 111 per cent. premium.

Regular meeting of the board of directors, Oct. 14, 1870.

The purchase of $1,000 as an advance to John W. Morsell was then taken up, and the board ordered that amount to be advanced on the same property given as security for his former advances, provided $500 be used to cancel a part of former advances, and one or more notes, secured by a 1st mortgage on this property, be paid.

DEC. 14, 1870.

158 The secretary called the roll, members paid in their dues, and advances were then sold to the highest bidders, as follows:

$1,000 to J. W. Morsell, at 175 per cent. premium; $1,000 to J. W. Morsell, at 141 per cent. premium.

Regular meeting of the board of directors, Dec. 16, 1870.

$1,000 was ordered to John W. Morsell, the same property to be given as security as for former advances, provided three notes of $200 each, with the interest, to be paid out of the proceeds of this advance. Committee valuation, $9,666.00.

JANY. 11, 1871.

The association was called to order by the vice-president. Members paid in their dues, and advances were then sold by the secretary to the highest bidders, as follows:

$500 to J. W. Morsell, at 125 per cent. premium.

Regular meeting of the board of directors, Jan'y 13, 1870.

159 The board also ordered the advance of $500 to J. W. Morsell, on the same security heretofore given, viz, house and lot on 3d st. west, bet. Pa. avenue and C streets, and valued $9,166.00 by the valuation committee.

FEB'Y 8, 1871.

Members paid in their dues, and advances were sold by the secretary to the highest bidders, as follows:

$500 to J. W. Morsell, at 106 per cent. premium.

Regular meeting of the board of directors, Feb'y 10, 1870.

Mr. J. W. Morsell's purchase of $500 was ordered to be advanced on the same property given as security for former advances, provided an additional note secured on the property be taken up and deposited with the secretary.

APRIL 12, 1871.

The association was called to order by the vice-president.
160 Members paid in their dues, and advances were then sold by the secretary to the highest bidders, as follows:

$1,000 to J. W. Morsell, at 78 per cent. premium.

Regular meeting of the board of directors, Apl. 14, 1871.

Mr. J. W. Morsell offered the same property now held for his former advances as security for his last purchase of $1,000. The board ordered this advance to be made, provided Mr. Morsell will take up four notes secured on the property on 1st mortgage and deposit the notes with the secretary.

BANK
vs.
MORSELL.

It is hereby stipulated and agreed that the above and foregoing
161 copies shall be read and considered in evidence with the same force and effect as the original journal containing the record of the proceedings of the Washington Co-operative Building and Dep. Association and of the board of directors of said association.

October 7, 1872.

ENOCH TOTTEN,
Solr. for Complainant.
J. J. JOHNSON,
For Def. Building Ass'n.

MEM.—The evidence in this cause is closed, and the auditor is requested to send in his report.

Oct. 8, 1872.

ENOCH TOTTEN,
Sol'r for 1st Nat'l Bank.
J. J. JOHNSON,
For Building Ass'n.

162 DEFDTS'. EXH. P.

John W. Morsell to Washington Co-operative Building & Dep. Ass., Dr.

1870.					
Jany.	22.	To advance $\frac{5}{10}$ sh's	$500		
		" premium, @ 169	845		
					1,345 00
"	"	" advance	300		
		" prem., @ 185	555		
					855 00
Mar.	14.	" advance	200		
		" prem., @ 160	320		
					520 00

June	18.	" advance	500		
		" prem., @ 120	650		
					1,150 00
Aug.	10.	" advance	1,000		
		" prem., @ 105	1,050		
					2,050 00
Sept.	12.	" advance	1,000		
		" prem., @ 96	960		
					1,960 00
Oct.	12.	" advance	1,000		
		" prem., @ 112	1,120		
					2,120 00
Dec.	14.	" advance	1,000		
		" prem., @ 141	1,410		
					2,410 00
1871.					
Jany.	19.	" advance	500		
		" prem., @ 125	625		
					1,125 00
					13,535 00
		Less credits			1,204 59
					12,330 41

CR.

1871.					
Jan'y	19.	By return of advance on $\frac{8}{10}$ sh's			$80 00
		" " " prem'm		$140 00	
		" " " advance " $\frac{2}{10}$ sh's			16 60
		" " " prem		26 70	
				166 70	96 60
163		Amt. brought forward		166 70	96 60
Jan'y	19.	By return of advance on $\frac{5}{10}$ sh's			29 19
		" " " prem. "		37 87	
Aug.	10.	" " " advance " 1 shr			41 66
		" " " prem. "		43 75	
Sep.	12.	" " " advance " 1 shr			33 33
		" " " prem. " "		32 32	
Oct.	12.	" " " advance "			25 00
		" " " prem. "		28 00	
Dec.	14.	" " " advance "			8 33
		" " " prem. "		11 75	
				320 07	234 11
		Cr. 10 % credit			23 41
					257 52

CR.

Cash paid on six share' of stock	570 00
10 % credit	57 00
	627 00

Total credit on stock	$627 00
" " advance	257 52
" " " prem	320 07
	$1,204 59
Less fine	

164 *Exceptions to auditor's report.—Filed Nov.* 4, 1872.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK OF WASHINGTON *vs.* JOHN W. MORSELL ET AL. } 2517. Equity.

And now comes the plaintiff, and also the other creditors of the said defendant Morsell, who elected to come into this cause, and except to the report of the auditor heretofore filed herein, and for cause assign the following, to wit:

First. The said report erroneously gives priority over the judgments filed in the cause to the deed of trust dated October 21, 1869, made to secure to the Washington Co-operative Building Association the payment of a bond for $10,000.00, the record of which deed was unlawful and void, because the said deed was insufficiently stamped.

Second. The said report erroneously gives priority over the judgments filed in this cause to the deed of trust dated March 1,
165 1871, made to secure to the said building association the payment of a bond for the sum of $10,000.00, the record of which said last-mentioned deed was unlawful and void, because the said deed was insufficiently stamped.

Third. Said deed of trust dated March 1, 1871, as appears by said report, and the papers in said cause, was made and delivered long after the time when the judgments in favor of said First National Bank and Means, Skinner and Company were docketed and recorded in this court.

Fourth. Said report allows to the said building association a large sum for exorbitant fines imposed upon and charged against said defendant Morsell by said association.

Fifth. Said report allow' to said association unlawful and 'reasonable interest for the use of money charged against said Morsell by said building association.

Sixth. That said auditor's report is in other particulars erroneous.

166 In all which particulars the said complainant and the other judgment-creditors doth except to the said report, and appeal therefrom to the judgment of this honorable court.

ENOCH TOTTEN,
Counsel for Bank.
WM. JNO. MILLER,
Sol. for Petitioning Creditors Barth.
WM. D. CASSIN,
Sol'r for Means, Skinner & Co.

Amended bill.—Filed May 7, 1873.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK
vs.
JOHN W. MORSELL ET AL. } 2517. Equity.

Amendment to the complainant's bill of complaint.

The said complainant, by leave of the court, amends the first prayer of the said bill, by striking out that part of said prayer relating
167 to the distribution of the proceeds of the sale, and substituting in lieu thereof the following, to wit: That the proceeds of such sale may be distributed according to law.

ENOCH TOTTEN,
Sol'r for Complainant.

Petition of E. L. Stanton to be made party plff.—Filed Sept. 30, 1873.

In the supreme court of the District of Columbia.

FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL ET AL. } 2517. Equity.

The petition', Edwin L. Stanton, respectfully shows, that on the 19th day of September, 1873, he was appointed receiver, according to the statute in such case made and provided, to take charge of the books, assets, &c., of the First National Bank, the above-named complainant, and the petitioner therefore prays that he be made complainant in lieu of said bank in his said capacity of receiver.

EDWIN L. STANTON,
By ENOCH TOTTEN,
His Solicitor.

168 MONDAY, *Sept.* 22, 1873.

Proceedings before the supreme court of the District of Columbia, in general term, commencing the fourth Monday of September, 1873, the 22d. Present, Chief-Justice D. K. Cartter and Justices Olin, Wylie, and Humphreys—Mr. Justice MacArthur holding criminal court.

TUESDAY, *Sept.* 30, 1873.

Session resumed pursuant to adjournment. Present, Chief-Justice Cartter and Justices Olin, Wylie, and Humphreys.

FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL ET AL. } 2517. Equity.

Upon reading and filing the complainant's petition now presented to the court, it is ordered that Edwin L. Stanton, the receiver, be made party-complainant in this cause. And thereupon the case is argued by Messrs. Totten and Elliot. Argument to be continued to-morrow.

169 WEDNESDAY, *October* 1, 1873.

Session resumed pursuant to adjournment. Present Chief-Justice Cartter and Justices Olin, Wylie, Humphreys and MacArthur.

FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL ET AL. } 2517. Equity.

Argument resumed by Mr. Elliot, for defendant, and concluded by Mr. Totten, for complainant, upon whose motion leave is granted complainant to file an amendment, already marked "Filed May 7, 1873," to the original bill; to the filing of which amendment the defendants, by their solicitors, object, unless with leave to answer the bill as amended.

SATURDAY, *December* 6, 1873.

Session resumed pursuant to adjournment. Present, Chief-Justice Cartter and Justices Wylie & MacArthur.

FIRST NATIONAL BANK OF WASHINGTON
vs.
JOHN W. MORSELL ET AL. } 2517. Equity docket 11.

170 This cause having been certified to this term, and coming on to be heard on the pleadings, proofs, exhibits, and report of the auditor, with the exceptions taken thereto by the complainant, and by Means, Skinner & Co., and Samuel Barth, intervening judgment-creditors of the defendant Morsell, and having been argued by counsel and duly considered, it is thereupon, this sixth day of December, A. D. 1873, ordered, adjudged, and decreed that the third exception taken as aforesaid be, and the same hereby is, sustained, and that the remainder of said exceptions be, and the same hereby are, overruled. And it is further ordered, adjudged, and decreed that, in the distribution of the fund in this cause, priority shall be given to the judgments in favor of complainant, and in favor of Means, Skinner & Co., respectively, according to the date of the docket-entry of each of said judgments over the amount due the Washington Co-operative Building Association, under and by virtue of two certain bonds, dated, respectively, March 1, 1871, and April 29, 1871, and secured by the deed of trust bearing date March 1st, 1871, and referred to in the proceedings, executed by said defendant Morsell to Jones and Edson, and in all other respects the report of the auditor as aforesaid be, and the same hereby is, finally ratified and confirmed.

And from this decree the defendants in open court pray an appeal to the Supreme Court of the United States, which is allowed.

By order of the court.

D. K. CARTTER,
Chief-Justice.

171 In the supreme court of the District of Columbia, the 14 day of March, 1874.

THE FIRST NATIONAL BANK, PLAINTIFF,
vs.
JOHN W. MORSELL ET AL., DEFENDANT'. } No. 2517. Eq. doc. 11.

The defendants having appealed to the Supreme Court of the U. S. from the decree pronounced herein on the 6th of December, 1873, in the

supreme court of the D. C., and Michael P. Callan, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

J. E. THOMPSON.
M. P. CALLAN.

Approved:

A. W.

172 DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing 171 pages of writing are truly copied from the originals on file and of record in the clerk's office of said court, said originals constituting the entire record in an equity cause pending and lately decided in said court, entitled The First National Bank of Washington, D. C., vs. John W. Morsell, et al. No. 2517. Equity docket 11.

Witness my hand and the seal of said court, this 14th day of March, A. D. 1874.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 162. John W. Morsell, Michael F. Callan, et al., appellants, vs. The First National Bank of Washington. District of Columbia sup. court. Filed 23 March, 1874.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1875. No. 162.

JOHN W. MORSELL, *et al.*, *Appellants*,
vs.
THE FIRST NATIONAL BANK OF WASHINGTON, *et al.*

Appeal from the Supreme Court of the District of Columbia.

R. K. ELLIOT,
J. J. JOHNSON,
Counsel for Appellants.

R. O. Polkinhorn, Printer, Washington, D. C.

Supreme Court, United States.

October Term, 1875. No. 162.

JOHN W. MORSELL, *et al.*, *Appellants*,
vs.
THE FIRST NATIONAL BANK OF WASHINGTON, *et al.*

Appeal from the Supreme Court of the District of Columbia.

THE CASE.

This was a judgment creditor's Bill, filed on the 22d of September, 1871, by the First National Bank of Washington, as well in its own behalf, as in behalf of all judgment creditors of John W. Morsell, who might elect to come in, &c. After reciting the recovery of the judgment in favor of the Bank, the return of the marshal on the writ of *fieri facias*, the various incumbrances by deeds of trust upon lot 44, reservation 10, in the city of Washington, in which lot Morsell had an equity of redemption, it prayed *specifically* that the lot be sold, and that *the debts secured by the several deeds of trust should be first paid out of the proceeds of sale;* and then, that the judgment debt of the Bank be paid, and for general relief. (Record, 1, 2.)

It appears that on the 4th of November, 1867, Morsell executed and delivered to Flodoardo Howard, one of the parties to the suit, a deed of trust, whereby he conveyed the lot in question to Howard, in trust, to se-

cure his (Morsell's) grantors the sum of $10,000, represented by various promissory notes for the purchase money of the property. (Record 1, 4.)

Subsequently, to wit, on the 21st of October, 1869, Morsell, who was a stockholder in the Washington Co-operative Building and Deposit Association, an unincorporated association of individuals in the city of Washington, obtained advances of money from the association for the purpose of taking up the purchase money notes secured by the first trust, (and nearly all of it was so applied;) and thereupon he executed his bond to the Treasurer of the association, and a deed of trust bearing even date therewith, whereby he conveyed the same lot to Jones and Woodward, trustees, to secure the faithful performance of the conditions of the bond. (Record 2, 24, 26, 29, 41, 44, 45, 46.)

This deed of trust, which was duly recorded on the 25th of October, 1869, (Record 29) and the bond therein mentioned, (Record 41) secured as well the sum of $3,050, with which he was then chargeable, as "any and all other future advances, which may hereafter, within five years from the date hereof and to the extent of said sum of $10,000, be made by said association to said John W. Morsell, together with all dues, fines, arrearages and forfeitures, which may accrue and be properly chargeable against the said Morsell under the Constitution or articles of said association."

The association continued from time, to time, subsequent to the execution, delivery and record of this deed of trust, to make advances of money to Morsell on his purchases thereof, upon his several shares of stock, in accordance with the Constitution or articles of association, and taking from him at the time of each separate advance, his bond or writing obligatory, covering the

amount of each advance and the premium thereon, which, according to said Constitution, were to be paid by him at the date of one one hundred-and-twentieth part each, monthly and every month. The advances of money thus made amounted in the aggregate to $7,500.

(Record 27, 28, 29, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46.)

Upon this sum he was entitled to and received certain specified credits, which reduced his indebtedness to the association on the 8th of December, 1871, to $\$6,974\frac{26}{100}$, which was, however, increased each, and every month thereafter, by the non-payment of the regular monthly dues. (Record 6, 20.)

It also appears that pending these advances of money by the association, under the deed of trust and bond, dated October 21st, 1869, and the several special bonds referred to,—to wit: on the 24th of January, 1871, the Bank obtained a judgment in the Court below against Morsell, and on the 10th of February of the same year, Means, Skinner & Company also obtained judgment in said Court against him. Execution issued on both these judgments, and was returned "*Nulla bona.*" (Record, 1, 9, 17.)

The Building Association, in addition to the deed of trust of October 21st, 1869, received another deed of trust from Morsell upon the same property, bearing date March 1st, 1871, which was recorded on the 4th day of the same month and year. (Record, 30, 32, 33.)

This deed is similar to the first one, and is accompanied by a bond similar to the one originally given under the first deed of trust (Oct. 21, 1869). (Record, 42, 43.)

There is also a special bond, dated April 26th, 1871, covering the money advanced subsequent to the 1st of March, 1871, and the premium thereon. (Record, 41, 42.)

The answers of Howard, trustee under the deed of trust of the 4th of November, 1867, and of the beneficiaries named therein, set forth the amount remaining due and unpaid, but secured by said trust, viz: $845.—(Record, 15, 16.)

The answer of Morsell, sets forth his obligations under the several deeds of trust, and admits the judgment debt of the Bank against him. (Record, 4, 5.)

The answer of Callan, Treasurer of the Building Association, states the amount due the Association, and secured by the trusts in its favor. (Record, 5, 6.)

The cause was heard at the special term on the bill and answers, and a sale of the real property decreed, with instructions to bring the proceeds into Court, "to be disposed of under the direction of this Court." (Record, 7.)

Subsequently, to wit: on the 4th of March, 1872, Means, Skinner & Company, judgment creditors of Morsell, as aforesaid, were, on their own petition, made co-complainants. (Record 8, 9.)

The property was sold under the decree for $9,113.—(Record 12.)

The sale was ratified and confirmed. (Record, 13.)

The cause was referred to the Auditor of the Court "to ascertain and report the amounts due the various encumbrances, mentioned in the bill, and to state the account of the trustee for the proper distribution of the proceeds of the sale." (Record 13.)

The Auditor (Walter S. Cox, Esq.) reported accordingly, preferring the claims of the Building Association, under the deeds of trust, to the judgments in favor of the Bank, and Means, Skinner & Company. (Record 17, 18, 19.)

The complainant (the Bank) and the other judgment

creditors of Morsell excepted to the report of the Auditor upon six grounds. Record, 48.)

The case was heard on the exceptions, &c., &c., at the General Term, in the first instance, and leave was granted complainants at the hearing, "to file an amendment already marked," filed May 7, 1873," to the original bill, to the filing of which amendment the defendants (appellants) objected unless with leave to answer the bill as amended."

The court did not grant such leave, but proceeded to final decree, overruling all the exceptions to the report of the Auditor excepting the third, which is in the words and figures following, to wit: "Third. Said deed of trust dated March 1st, 1871, as appears by said report and the papers in said cause was made and delivered long after the time when the judgments in favor of said First National Bank, and Means, Skinner & Company were docketed and recorded in this court."

This exception was sustained, and thereupon the court decreed distribution of the proceeds of sale, giving priority in said distribution "to the judgments in favor of the complainant (the Bank,) and in favor of Means, Skinner & Company, respectively, according to the date of the docket entry of each of said judgments over the amount due the Washington Co-operative Building Association, under and by virtue of two certain bonds, dated respectively March 1st, 1871, and April 29, 1871, and secured by the deed of trust bearing date March 1st, 1871."

(Record 48, 49, 50.)

From this decree an appeal was taken to this court, and the case is now here on that appeal.

Assignment of Errors.

The decree is erroneous and should reversed.

1st. Because founded upon an amended bill which the appellants were not permitted to answer, and—

2d. That it gives priority in payment to the judgments referred to, over the amount due the Building Association.

Brief of Argument.

As to the first assignment of error, the court will observe, that the case made by the original pleadings was a very simple one, invoking no contest, because praying a sale of the real property described, and distribution of the proceeds thereof in exact conformity to the rights of the parties, and the desire of the appellants.

(Record 17, 20.)

There was no contest, until the report of the auditor disclosed the fact that the proceeds of sale (after deducting expenses,) were not sufficient to pay the creditors secured by the several deeds of trust, and those by judgment also—hence the amendment to the prayer of the bill, *striking out the prayer giving the former priority*, and substituting in lieu thereof a prayer for distribution "according to law." This amendment made a new case, and it was the right of the parties interested in the fund to try the case thus made, if in their judgment they should be so disposed, and the court should not have proceeded to final decree without first affording them an opportunity of making further answer, and taking further testimony if necessary.

It is not contended that the court had no power to allow an amendment to the original Bill, at the hearing, but it is submitted that the defendants (appellants)

should have had leave to answer the bill as amended if they so desired.

In respect of the second assignment of error, it will be observed that the only exception taken by the judgment creditors to the report of the auditor (Record 48), which was sustained by the decree, of the court below (Record, 50), was the "third," which merely alleged a *record* fact; but notwithstanding the overruling of the other exceptions, the Court decreed distribution *in favor of the judgment creditors*, and this brings us to the important questions involved in the case, viz:

1st. Whether the indebtedness of Morsell to the Building Association, as set out in the record, was not fully protected and secured by the deed of trust, bearing date October 21st, 1869, notwithstanding the deed of trust of March 1st, 1871, and therefore should have had priority in payment to the judgments referred to? and—

2d. If *all* of said indebtedness was not so protected and secured, whether by the law of the District of Columbia, at the time said judgments respectively, were rendered and docketed, they constituted *such* liens upon the equity of redemption of Morsell in the lot in question, as to entitle them to priority in payment over the amount advanced by the Building Association to Morsell, or due by him subsequent to the 1st of March, 1871, the date of the last mentioned deed of trust?

Upon the first proposition it is clear, that the bond and deed of trust of October 21st, 1869 (Record 29, 41), afforded ample record security as well for the sum of $3,050, then chargeable to Morsell, "as also any and all other future advances which may hereafter, within five years from the date hereof, and to the extent of said sum of ten thousand dollars be made by said Associa-

tion, to said John W. Morsell. * * * * * * * *"

The aggregated advances amounted only to $7,500, (Record 27, 28.)

A clause in a deed of trust or mortgage, for future advances, is valid to the extent therein specified, and such future advances will be protected as against subsequent incumbrancers, especially those who take nothing upon the faith of the particular security, as in the case of judgment creditors, who proceed against the debtor *in invitum* merely, seeking only to reach *his* interest, and being entitled to nothing more, and this rule is inflexibly and uniformily enforced in the absence of *affirmative proof* of notice of the judgment, which notice, under certain circumstances, should arouse the suspicion of the mortgage creditor, and any advances made by him thereafter, might be subjected to the imputation of fraud or collusion. In the present case no such condition of things exist. (Record 18.)

So that the rule applies, and the advances to the full extent thereof were protected and secured by the deed of trust of October 21st, 1869, fifteen months prior to the rendition of the judgments.

Lyle vs. Ducomb, 5 Binn, 585.

Ladna vs. D. & M. R. R. Co., 13 Mich, 380, and authorities there cited.

3 Kent Com., 175.

Moroney's Appeal, 12 Harris, 362.

S. C. 3d Am. Law Reg., O. S. 169.

Crain vs. Deming, 7th Conn., 387.

Wilson vs. Russell, 13 Md., 495.

McDaniels vs. Colvin, 16 Vert, 300.

Brown vs. Sharp Man. Co., 29th Conn., 282.

Act of Congress, approved April 20, 1838 (5th Statutes at Large, 226) provides, in substance, that all deeds of trust and mortgages in the District of Columbia take effect from and after the date of record; so that, in the present case, the record contained notice of an incumbrance to the extent of $10,000, antedating the docketing of either of the judgments, and the advances actually made were within that sum.

It is submitted, therefore, that the entire indebtedness of Morsell to the Building Association was within the *very terms* of the trust deed of 1869, and that the deed of March 1st, 1871, was merely *additional security*, and in view of the extent of the advances at that time, a work of supererogation. By the decree of the Court below, this fact appears to have been entirely overlooked, and the advances made subsequent to the date of the last-mentioned deed of trust (March 1st, 1869) are treated as having no security excepting the bond and trust deed of that date; hence the priority given the antecedent judgments. (Record, 50.)

But assuming that the trust deed of 1869, afforded no security for the advances made at the time of the execution of the deed of March 1st, 1871, and subsequent thereto, the court below erred in the decree. And this brings us to the consideration of the second proposition, under the second assignment of error, viz: Whether the judgments were *per se* liens upon the equity of redemption in the lot in question, so as to entitle them to priority, in satisfaction over the amount advanced by the Building Association, on, or subsequent to, the 1st of March, 1871?

By the common law, which was the law of Maryland, in this particular, at the time of the cession of a portion of its territory, for the seat of the Federal government, an

equity of redemption in lands was not liable to execution at law, on a judgment. It has been so held by this court, and in England (under the same law) and in several of the States.

Van Ness v. Hyatt, 13 Pet. 294.
S. C. 5th Cranch C. C. 127, 153.
Stelle v. Carroll et al., 12 Pet. 201.
Bank v. Guttschlick, 14 Pet. 19.
Smith v. McCann, 24 How. 401.
Sawyer v. Morte, 3 Cr. C. C. 301.
Lyster v. Dolland, 1st Ves. Jr. 431.
Scott v. Scholey, 8 East. 467.
Metcalf v. Scholey, 5 Bos. & Pull. 461.
Piatt v. Oliver et al., 2 McLean 269.
Hill v. Smith, Ibid 446.
4th Kent's Com. 160, note *a*.

The Circuit Court of the District of Columbia (per Cranch C. J.) in commenting upon the case of Van Ness v. Hyatt, at page 153 of the opinion say: "The only purpose of subjecting an equitable interest to execution at law is to give the plaintiff a lien *prior* to other creditors,"

In the absence of a statute to the contrary, the lien of a judgment upon lands depends upon the right to issue and *levy execution thereon*, and where there is no such right there is no lien, by analogy, to the rule that "where the right to issue execution is gone, the lien is gone."

Eppes v. Randolph, 2d Call. 103.

A general lien by judgment is not understood to constitute, *per se*, a property or right in the land itself, it merely confers a right to levy on the same to the exclusion of subsequent incumbrancers.

Conard v. Atlantic Ins. Co., 1 Pet., 387.

In the present case, we have shown that the judgment creditors had no right to levy execution upon the land; and where Congress has not legislated upon the subject the Federal Courts adopt the local law.

Williams v. Benedict, 8 How., 107.

The next inquiry is, was there any statute in force in the District of Columbia prior to the act of the local legislature of August 23d, 1871, (to which reference will be made hereafter,) altering or attempting to alter the rules of the common law in respect of the lien of a judgment upon lands within said District.

The statute of 5 Geo. 11, Ch. 7, in force in Maryland at the time of the cession, merely gave the right to creditors of judgment debtors in the Colonies to subject "the houses, land, negroes, *and other* hereditaments and real estates to the satisfaction of judgments, the same as personal estates, &c."

Alexander's British Statutes 716.

This was held to apply only to the *legal* estate in land, and not to an equity of redemption.

Van Ness v. Hyatt, 5 Cr. C. C. *ante*, which agrees with the English construction.

Plunkett v. Penson, 2 Atk., 292.

Shirley v. Watts, 3 Atk., 200.

Burden v. Kennedy, Ibid 379.

Hence, the act of the Maryland Legislature of 1810 (subsequent to the cession,) subjecting equitable estates in lands in that State to levy and sale under *fieri facias.*

Md. Code Art. 83, sec. 1.

Although it has been held by the Maryland Court of Appeals, *since* the cession of the territory comprised within the limits of the District, that by virtue of the acts of the Colonial Assembly of 1715, ch. 40, and 1795, ch.

56, that an equitable interest in lands in that State was subject to *attachment*, such never has been the law in this jurisdiction. The cases referred to are mentioned in the opinion of the Court in Van Ness vs. Hyatt (13 Pet.) where it is held that they "are not authority" within the District.

We conclude, therefore, that there was no statute in the District prior to the 23d of August, 1871, nor anything in the form of a statute, changing the rule of the common law in relation to the lien of a judgment upon an equity of redemption in land. On the date last referred to, the "Legislative Assembly of the District of Columbia" attempted to change the common law upon the subject, by enacting or ordaining in substance that, all judgments of record in the District of Columbia, should thereafter constitute liens upon the equitable interests of judgment debtors in and to real estate in said District. (Acts of 1st Legislative Assembly of the District, p. 163.)

It is not supposed that the decree of the Court below will be rested upon this ordinance, for independent of the fundamental objection to the competency of such a body as the late Legislative Assembly of the District of Columbia, to alter the rules of the common law in respect of real property, the act cannot lawfully be so construed as to affect prior vested rights, as it appears that in the present case the last advance of money made by the Building Association to Morsell, was on the 26th of April, 1871, it is scarcely possible that the security therefor can be affected by an ordinance or act passed in August, 1871.

But it may be said that it has been held in Maryland, (Lee vs. Stone, 5 G. & J), that "*in equity*," a judgment is a lien on an equitable estate in lands. That case was de-

cided since the cession, and since the act of 1810, and although it undoubtedly operated to influence the decision of the court below in the present case, it is clearly within the objection, stated in the opinion of this court in VanNess vs. Hyatt, besides it is not applicable to the questions presented by the record in this cause.

Rule is, that the particular creditor and the general creditor stand in different attitudes; the former never trusts the personal credit of the mortgagor, but looks to the security given for the debt. The general creditor trusts the personal credit alone, hence equity will prefer the claim of the particular creditor to the fund derived from the sale of the security given for his debt.

Thomas' Admrs. vs. VonKapffs, 6 G. & J. 372.

Story's Eq. Jur., § 1502.

The judgment itself constituting *no lien at law*, it was not constructive notice of its own existence, and a prior mortgagee making further advances on the same security, whether with or without an additional mortgage, was taking no new title, and was not put upon inquiry, and therefore notice of the judgment must be averred and proved, in order to postpone the payment of his claim to that of the judgment creditor, for in equity, in general, "a decree (or judgment) is not constructive notice to any persons who are not parties or privies to it, and therefore, other persons are not presumed to have notice of its contents."

1 Story Eq. Jur., § 407.

If, then, the judgments in favor of the Bank and of Means, Skinner & Company did not constitute liens at law upon Morsell's equitable interest in the land, by virtue of the right to levy execution thereon, which, as we have seen, is in this District, the foundation of the lien of a judg-

ment upon lands, how can they affect the security of a *bona fide* deed of trust executed and recorded subsequent to the docketing of said judgments, but *prior* to the filing of the Bill to enforce them.

The judgment creditor can acquire a lien, and does acquire a lien, as soon as he files his Bill in Equity to do what he cannot do at law, viz: sell the lands for the purpose of satisfying his judgment. By that act he creates a *lis pendens* and obtains a lien by reason thereof, and this is what is meant independent of a statute, by a "*lien in equity*," in cases where there are subsequent *bona fide* incumbrancers.

If the judgment were a lien at law, the creditor could enforce it by execution, and a court of equity would have no jurisdiction.

It is submitted that the uniform rule in the District of Columbia, sanctioned and sustained by the authorities cited, and others of dignity, is against the decree of the court below, and for the errors assigned it should be reversed, and a decree entered in favor of the appellants.

R. K. ELLIOT,
J. J. JOHNSON,
Counsel for Appellants.

IN THE

Supreme Court of the United States.

No. 162.—October Term, 1875.

JOHN W. MORSELL ET AL., Appellants,

vs.

THE FIRST NATIONAL BANK OF WASHINGTON, D. C., ET AL.

Brief for Appellees.

The First National Bank of Washington, being a judgment creditor of one John W. Morsell, filed a bill in the Supreme Court of the District of Columbia, on the 22d day of September, 1871, in its own behalf as well as in behalf of all other judgment creditors, for the purpose of reaching the equitable interest of said Morsell in the real property described in the bill. The condition of the title when the bill was filed was as follows, to wit:

On the 4th day of November, 1867, Morsell, having purchased the property in question from Eliza E. Howard and others, executed and delivered a deed of trust thereon, dated on that day, to the defendant, Flodoardo Howard, to secure the payment of the balance of the purchase money. This trust deed constituted the first incumbrance on the property.—(Record, 1 and 4.)

On the 21st day of October, 1869, the defendant, Morsell, having borrowed from the Washington Co-operative Building and Deposit Association, one of the defendants, the sum of $3,050, made and delivered to the defendants, Jones and Woodward, a trust deed bearing date on that day, to secure the payment of said loan. This trust deed constitutes the second incumbrance, and it recites that Mor-

sell, being indebted to the building association in the sum of $3,050 for advances made to him, had executed and delivered his certain bond or writing obligatory, of even date, in the penal sum of $10,000, conditioned to be void upon the payment of "as well the said sum of $3,050 as also any and all other and future advances which may hereafter, within five years from the date hereof, and to the extent of said sum of $10,000, be made by said association to said John W. Morsell," together with all fines, &c., &c.—(See Record, p. 29.)

Up to the 19th day of January, 1871, the building association had loaned to Morsell the sum of $6,000. This sum was paid to him at nine different dates, as follows:

1870, January 22	$800
" March 21	200
" June 18	500
" August 18	1,000
" September 14	1,000
" October 12	1,000
" December 14	1,000
1871, January 11	500
Total	$6,000

—(See Record, p. 23.)

During the period of such payments, and prior thereto, the association took from Morsell ten bonds for large sums of money, and dated as follows:

1869, October 21,	Bond for	$10,000
" December 13	" "	2,900
1870, January 18	" "	2,000
" March 14	" "	520
" April 20	" "	1,425
" June 13	" "	1,150
" August 15	" "	2,050
" October 20	" "	2,120
" December 20	" "	2,410
" January 18	" "	1,125
Total amount of bonds received		$25,690

—(Record, pp. 34–41.)

The amount of the penalty of the bond in each case is the same as the amount alleged therein as having been advanced by the association, except that in the bond of October 21, 1869, (the first one,) the amount of the advance is $3,050 and the penalty is $10,000.—(Record, 41.) This bond of October 21, 1869, is the only one mentioned in or covered by the terms of the trust deed of the same date.—(R., 29.) That deed bears a stamp of the denomination of $3.50.

On the 24th day of January, 1871, a judgment in favor of the bank and against Morsell was rendered and docketed, and on the 10th day of February, 1871, a judgment was docketed against Morsell in favor of Means, Skinner & Co., who are petitioning creditors in the cause. On these judgments executions were issued, which were afterwards returned endorsed, "nulla bona." —(R., pp. 3, 9.)

Afterwards, and on the 1st day of March, 1871, the association made another loan to Morsell of the sum of $500, and took from him a bond under seal, dated on that day, in the penal sum of $10,000. This bond is substantially the same in its terms as the original bond of October 21, 1869, except as to the date and amount, and contains the same provision as to future advances. It recites, however, that the amount of the advance was $1,060 instead of $500, the sum really and in truth loaned and paid.—(R., 22, 42.) To secure the payment of this bond Morsell and wife executed and delivered a deed of trust to the defendants Jones and Edson, of the same character as that of October 21, 1869, including the provisions relating to future advances. This deed bears a stamp for $1.50.

On the 27th day of April, 1871, the association made another loan to Morsell of $1,000, which sum was, on that day, paid to him by a check (R., 22), and as an evidence of the debt, took from him another bond dated on the 26th of April, 1871. This last bond recites that the

amount of money advanced was $1,780, instead of $1,000, the true amount.—(R., 41–2.)

An answer was filed in behalf of the building association and also by the defendant Morsell, in which the material allegations in the bill were admitted.

The defendant Howard, and also the heirs of the estate he represented, filed answers consenting to the sale of the property.

The cause came on to be heard on the pleadings, and a decree was passed appointing a trustee to sell the property, which was accordingly done. On the coming in of the trustee's report of sale the cause was referred to the auditor of the court to state the trustee's account and to distribute the fund. The proceeds of the sale were not sufficient to pay off the building association and the other creditors, and a controversy arose as to the priority of the various claims.

The counsel for the building association insisted that both the deeds of trust made for its security were entitled to priority over judgment creditors in the distribution. On the other hand, the judgment creditors insisted that the deed of trust of October 21, 1869, was a valid incumbrance for the sum of $3,050 only, and that it could not be held as a security against intervening judgment creditors for the future advances ($2,950), because it had been stamped as a security for $3,050 only; and, also, that the future advances were made on separate bonds, and consequently securities of equal dignity with the original security, and that such bonds could not be covered by the said deed of trust. They further insisted that their judgments became liens upon the property at the date of the rendition, and that, therefore, the last deed of trust, being of a later date than two of the judgments, was a subsequent incumbrance.

The auditor, in his distribution of the fund, gave priority to both of the deeds of trust of the association over the judgments, and the judgment creditors filed excep-

tions to his report. After argument the Supreme Court of the District of Columbia sustained the exceptions, so far as to give priority to the judgments over the trust deed of March 1, 1871, but it sustained the validity of the first deed as a lien for the whole amount advanced upon it, to wit, $6,000, and entered a decree accordingly. From this decree the building association appealed to this court.

Points and Authorities.

First. The deed of trust of October 21, 1869, having a stamp affixed of the value of $3.50, constituted an incumbrance against subsequent judgment creditors for only $3,050, that being the amount of the present debt named in the bond which the deed of trust secures. The act of Congress of June 30, 1864, (13 Stat., 292, sec. 152,) provides:

"That it shall not be lawful to record any instrument, document, or paper required by law to be stamped, unless a stamp or stamps of the proper amount shall have been affixed; and the record of any such instrument, upon which the proper stamp or stamps aforesaid shall not have been affixed, shall be utterly void, and shall not be used in evidence." The same act provides (page 300) that for a trust deed of the character of the one in question the stamp shall be at the rate of fifty cents for each five hundred dollars.

Section 160 of the said act provides, "that whenever any bond or note shall be secured by a mortgage, but one stamp shall be required to be placed on such paper." But the only bond secured by this trust deed was the bond of October 21, 1869, which is described in that instrument. The nine bonds subsequently issued by Morsell cannot be covered by its terms, and even if they should be, the fact that they were duly stamped could not increase the amount of the record incumbrance on

the property. The statute is imperative and requires that before an instrument of this kind can be lawfully recorded, a stamp "of the proper amount *shall have been affixed.*"

The trust deed of March 1, 1871, having a like infirmity as that of October 21, 1869, must share the same fate.

Second. The loans made by the building association subsequently to the date of the deed of October 21, 1869, and prior to the making of that of March 1, 1871, were made on the credit of new bonds, and cannot be regarded as "future advances" covered by the first trust deed. The subsequent bonds are of equal dignity with the original. The first deed of trust was made to secure one bond for $3,050.00, with a penalty of $10,000.00, and without reference to the question as to the sufficiency of the stamp, can secure that bond only; it cannot be extended to secure the payment of nine additional bonds, amounting in the aggregate to $15,690.00. The same reasoning applies to the deed of March 1, 1871, so as to exclude the bond of April 26, 1871, for $1,780.00.

Third. The judgment of the bank, and that of Means, Skinner & Co., having been rendered and docketed before the deed of trust of the 1st of March, 1871, are entitled to priority over it. A judgment constitutes a lien on an equity, of redemption in the District of Columbia, from the day of its rendition.—(Powell on Mortgs., 461; Coote on Mortgs., 31 & 516; *Lee vs. Stone*, 5 G. & J., 19; *Ford vs. Philpot*, 5 H. & J., 315; *Symes vs. Simonds*, 4 Brown's Par. Cases, 328; *Haley vs. Williams*, 1 Leigh, 140; *Coutts vs. Walker*, 2 Leigh, 268; *Campbell vs. Morris*, 3 Harris & McH., 535; *Tayloe vs. Thompson*, 5 Peters, 367; *Burton vs. Smith*, 13 Peters, 483; *Pratt vs. Law*, 9 Cranch, 496.)

By virtue of the act of George II., ch. 7, sec. 4, "houses, lands, negroes, and other hereditaments and real estate"

are made "liable to and chargeable with all just debts" of the debtor in Maryland and the District of Columbia. This statute was held to authorize the sale of lands on *fieri facias*, and to create a lien upon real estate.—(Alex. British Stat., 716, (n.); *Tayloe vs. Thompson.*)

In Virginia, as in England, the right to take out an elegit created a lien upon the lands of the debtor. The writ of elegit commands the officer to deliver to the plaintiff a moiety of all the *lands and tenements* whereof the debtor, at the time of obtaining the judgment, was seized, or at any time afterwards.—(*Burton vs. Smith.*) The judgment became a lien upon an equity of redemption as well as upon a fee simple estate.—(*Haley vs. Williams; Coutts vs. Walker; Benton vs. Smith.*)

The act of the Maryland assembly of 1715, and the act of 1795, supplementary thereto, relating to attachments, authorizes the *lands*, *tenements*, goods, and chattels of the debtor to be attached, and the Court of Appeals of Maryland, in 1797, held that an equity of redemption could be levied upon and sold by attachment under this act.—(*Campbell vs. Morris*, 3 Harris & McH., 535; *Ford vs. Philpot*, 5 H. & J., 315.) The decision in *Campbell vs. Morris* was regarded by this court as final upon that question in *Pratt vs. Law*, 9 Cranch., 496; and in *Tayloe vs. Thompson*, 5 P., 367, this court said that the decisions of the courts of Maryland, before the cession of the District of Columbia (1801), are to be considered as a part of the statute transmitted to us, and as furnishing a rule of decision for the federal courts here.

This court, in the case of *Pratt vs. Law*, 9 C., 496, declared that the attachment act of Maryland, "in making this interest tangible, makes it subject to the ordinary process of the law courts;" and in the recent case of *Webb vs. Sharp*, (3 Wall., 14,) it declared that "a deed of trust does not protect goods from a sale by execution;" and also "that a purchaser at an execution sale would

be entitled to redeem the goods from the deed of trust by paying the debt secured thereby."

An equity of redemption in the District of Columbia is, therefore, by force of the statute, made chargeable with the debts of the debtor, and it must follow from the doctrine of the foregoing cases that a judgment constitutes a lien upon an equity of redemption.

Fourth. When Morsell executed the deed of trust of October 21, 1869, the legal estate was outstanding in Howard, and the security of the building association was a second incumbrance based upon an equity of redemption. The judgments operated upon the same estate, and consequently the equities are equal, and the maxim of the English law in such cases, *qui prior est tempore potior est jure*, is applicable. Mortgages, in such cases, cannot be preferred, "but will take place according to priority, and as they stand in order of time, with statutes, judgments, and recognizances."—(Powell on Mortgs., 461 and 473; *Symes vs. Simonds*, 4 Brown's Par. Cases, 328; *Sharpe vs. Scarborough*, 4 Vesey, 538.) This rule has been followed in the courts of the District of Columbia ever since the case of *Scott vs. Lynch*, in 1845, (MS.) The rule was followed in the case of *U. S. vs. Mudd*, cited in the report of *Scott vs. Lynch*, and very recently, in the case of *Yates vs. Seitz*, (not reported.) In the case of *U. S. vs. Mudd* the court said that the doctrine established by the case of *Scott vs. Lynch* must be regarded as the settled law of the court until reversed. The rule followed in the court below in the present case has, therefore, been the established rule of property for more than thirty years in the District of Columbia.

ENOCH TOTTEN,
Counsel for Appellees.